114-663

SUPREME COURT OF THE UNITED STATES.

No. ~~329~~. 342

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY AND PETER GEDDES, ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS OF THE STATE OF TENNESSEE, ISSUED TO THE MEMPHIS AND CHARLESTON RAILROAD COMPANY,

vs.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

INDEX.

	Original.	Copy.
Bill	1	1
Ex. B, Act of General Assembly of Tennessee, Feb. 8th, 1854, amending Act of Feb. 11th, 1882	25	27
Ex. C, Bond of State of Tennessee	29	31
Ex. D, Act of February 21, 1856	30	32
Ex. E, Act of February 25, 1869	32	34
Ex. F, Act of January 2, 1870	35	37
Answer	37	39
Schedule A, Certificate of Governor, &c., July 25, 1877	112	114
Replication	116	119
Petition of Kelly, Terry & Geddes to be made Parties	118	121
Order Granting Petition	120	123
Amended Bill	122	125
Ex. B, Act of February 8th, 1854	148	152
Ex. C, Form of Bond	152	156
Ex. D, Act of February 21st, 1856	152	156
Ex. E, Act of February 25, 1869	155	159
Ex. F, Act of January 2d, 1870	157	161
Answer to Amended Bill	159	163

	Original.	Copy.
Answer and Cross Bill of Wm. T. Walters	172	177
Ex. No. 1, Mortgage of M. & C. R. R. Co., May 20, 1877.	227	232
" 2, Tripartite Agreement	262	267
" 3, Joint Resolution of General Assembly	295	300
" 4, Settlement with L. & N. R. R. Co	296	301
" 5, Statement showing Amount of Bonds Issued to Railroad Companies	299	304
Answer to Cross Bill	304	309
Replication	307	313
Opinion of Judge Withey	309	315
Decree	329	335
Supersedeas Bond	332	341
Stipulation as to Taking of Testimony	340	347
" " Waiving Citation	341	349
" " Letter of J. L. Gaines to P. Geddes	342	351
Letter of Evarts, Southmayd and Choate to Wilson	344	353
Deposition of R. T. Wilson	346	355
Compls. Ex. No. 1, Opinion of Charles Tracy	412	421
" " " 2, Mem. of Agreement between E. T., V. & G. R. R. Co. and Wilson and Fourth National Bank	414	423
Compls. Ex. No. 3, Letters of R. T. Wilson & Co. to Officers of E. T., V. & G. R. R. Co	420	429
Compls. Ex. No. 4, Bond Retiring Account	424	433
" " 5, Letters of Wilson & Co. to Iselin & Co	429	438
Compls. Ex. No. 6, Memorandum from Iselin & Co	437	446
" " 7, Letters from Wilson to Terry	437	446
" " 8, Statement of M. & O. R. R. Co. with State	443	452
Resps. Ex. No. 1, Bonds of E. T., V. & G. R. R. Co	444	453
" " 2, Report of Com. of Sinking Fund, and Receipts	445	454
Resps. Ex. No. 3, State Loan, Extract	448	457
" " 4, Comptroller Calhoun's Receipts	449	458
Deposition of Calvin Amory Stevens	453	463
Compls. Exs. Nos. 1 and 2, Notes from Bosher to Stevens.	483	493
" Ex. No. 3, Petition of Bondholders	484	494
" " 4, Bill vs. E. T., V. & G. R. R	493	503
" " 5, Deposition of Motheral before Investigating Committee	510	520
Compls. Ex. No. 6, Deposition of M. C. Calloway before Investigating Committee	512	522
Compls. Ex. No. 7, Extract from Cash Book of C. Stevens	516	526
" " 8, Letter of S. Watson to N. Y. Times	516	526
Deposition of Calvin Amory Stevens	530	541
Certificate of Examiner as to Production of Bonds	542	553

	Original.	Copy.
Resps. Ex. No. 1, Letter of Dec. 15, 1877, from Stevens to Gov. Porter	548	559
Resps. Ex. No. 2, Despatch of Stevens to Gov. Porter	549	560
Deposition of George Arents	550	561
Ex. No. 1, Statement of Bonds issued before the war	556	566
Deposition of Eugene Kelly	562	573
Compls. Ex. No. 1, Form of Bonds, &c	568	579
Resps. " " 1, Form of Assent	573	584
" " " 2, Circular of Committee	574	585
" " " 3, List of Kelly's Bonds	581	592
Deposition of John T. Terry	582	593
Examiner's Certificate as to Foreclosure of Bonds	595	606
Resps. Ex. No. 1, Account of Bonds bought and sold	602	613
" " " 2, Mem. of Bonds	603	614
" " " 3, Form of Assent	608	619
" " " 4, Circular of Committee	609	620
Deposition of Peter Geddes	616	627
Certificate of Examiner as to Proof of Bond	630	641
Resps. Ex. No. 1, Letter of Geddes to Porter, Feb. 15, 1877	634	645
Resps. Ex. No. 2, Letter of Geddes & Smith to Porter	640	651
" " " 3, Letter of Geddes to Comptroller, Aug., 1877	643	654
Resps. Exs. Nos. 4, 5, 6, Letters from Geddes to Gaines	645	656
" Ex. No. 7, Form of Assent	650	661
" " " 8, Circular of Committee	651	662
Deposition of R. C. Jackson	658	669
" " J. G. M. Ramsey	663	675
" " John J. Craig	665	677
" " Charles J. McKenney	668	681
" " Samuel Tate	671	685
" " Columbus Powell	677	691
" " V. K. Stevenson	682	697
" " John S. Claybrooke	699	715
" " Campbell Wallace	719	737
" " Perez Dickenson	739	755
" " John M. Fleming	741	757
" " Maney Bell	749	765
" " James L. Gaines	764	781
" " G. W. Seay	802	819
" " Wm. Morrow	805	823
" " S. R. Cruse	809	827
" " " "	811	829
" " James D. Porter	814	833
Exhibits	820	839
" " H. L. Claiborne	835	855
" " Neill S. Prown	844	865

	Original.	Copy.
Deposition of Richard T. Wilson	846	867
Resps. Ex. No. 1, Mortgage of E. T., V. & G. R. R. Co.	853	884
" " " 2, Mortgage of K. & O. R. R. Co. to Wilson and others	889	910
Resps. Ex. No. 3, Statement of Railroad Companies which have retired their debts to State	906	927
Comps. Ex. No. 1, Resolution of M. & C. R. R. Co.	908	929
Deposition of Joseph W. Drexel	921	943
" " B. O. White	929	951
" " James A. Roosevelt	932	955
" " Adrian Iselin, Jr	940	959
" " W. H. Osborn	947	967
Resps. Ex. No. 1, Mortgage of C., St. L. & N. O. R. R.	962	982
" " 2, Certificate of Governor and Secretary of State	1010	1030
Deposition of James P. Wallace	1013	1033
" " Thomas Denny	1019	1039
" " Morris K. Jesup	1024	1045
" " Adrian Iselin	1029	1051
Resps. Ex. No. 1, Mortgage of M. & C. R. R. Co.	1045	1067
" " 2, Deed of Iselin & Co.	1097	1119
" " 3, Treasurer's Certificate	1147	1171
Deposition of John C. Brown	1161	1185
Memphis and Charleston Railroad, Receipt of State of Tennessee for bonds	1166	1191
Certificate of Circuit Clerk	1188	1213

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United States Circuit Court,

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company,

versus

The Memphis and Charleston Railroad Company.

BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee.

Your orator, Calvin Amory Stevens, who is a citizen of the State of New York, brings this, his bill of complaint, against the Memphis and Charleston Railroad Company, and the East Tennessee, Virginia and Georgia Railroad Company, which are citizens of the State of Tennessee, and corporations organized, existing, and transacting business in said State by virtue of, and under, acts of the General Assembly of said State.

And thereupon your orator, complaining, shows unto your Honors that he brings this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds issued by the State of Tennessee to the Memphis and Charleston Railroad Company, who may come in and contribute to the expenses of this litigation, as on his own behalf as a holder of said bonds.

Your orator shows that the Memphis and Charleston Railroad Company is a body, politic and corporate, chartered by acts of the General Assembly of the State of Tennessee, passed February 2, 1846. The object and purpose of the creation of said corporation, by the said several charters, was the construction, completion, and, thereafter the operation and

management of a line of railway for the transportation of passengers and freight from the city of Memphis, in the State of Tennessee, through the territory of the State of Tennessee, to a point in the easternmost part of said State.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corportion was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

On or about the second day of June, the Memphis and Charleston Railroad was leased to the defendant, the East Tennessee, Virginia and Georgia Railroad Company, for the period of twenty years. The said last named company now possesses and operates the Memphis and Charleston Railroad, under the said lease.

Your orator makes part of this, his bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orator shows that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within its limits, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road. The act proceeds to authorize

and give validity to bonds of the State, which the governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were loaned. The president of each railroad company, assisted by a commissioner appointed by the governor, was to negotiate the sale of the bonds loaned to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds, was, that each company become liable upon, and bound to perform, the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orator shows that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its president might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company," and the "State of Ten-

nessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all of the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads.

The Comptroller of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall

have procured *bona fide* subscriptions for the capital stock in said company to an amount sufficient to grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851–2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue *to said company* coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, *which bonds shall be payable at such place in the United States as the President of the Company may designate*, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

Sec. 2. *Be it enacted*, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to

act in any other matters pertaining to said company, where the interest of the State, in the opinion of the Governor, may require it.

SEC. 3. *Be it enacted, That so soon as the* BONDS *of the State shall have been issued for the first section of the road as aforesaid,* THEY *shall constitute a lien upon said section so prepared as aforesaid,* including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same shall be *invested* with *said* lien or mortgage without a deed from the company, *for the payment by said company of said bonds,* with the interest thereon as the same becomes due.

SEC. 4. *Be it enacted,* That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be *invested* with *a like mortgage or lien* without a deed from said company, upon said stock, and upon *said first and additional section or sections* of said road so prepared, upon the rails and equipments put, or to be put, upon the same, *for the payment of said bonds and the accruing interest thereon.* Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent for an amount in proportion to the distance, as provided in this act, but upon the same terms and conditions in all respects, as required in

regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be compieted the State of Tennessee shall be *invested with a lien, without a deed from the company*, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, *for the payment of all of said bonds issued to the company* as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

SEC. 5. *Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions*, OR SATISFACTORY EVIDENCE THAT SAID INTEREST HAS BEEN PAID OR PROVIDED FOR, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits, and dividends, *and pay over the same, under the direction of the Governor, toward the liquida-*

tion of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures, and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to said proceedings, *to pay off and discharge the interest as aforesaid, due on said bonds*, which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, *as may not be provided for by the compauy, as provided for in this act*, and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6. *Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due*, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by tho Ceurt, *to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee, against any loss on account of the issuance of said bonds,* by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto

or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. *Be it enacted*, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, *and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid*, AND CANCELED. And should said company fail to comply with the provisions of this section, it shall be proceeded against, *as provided in the 5th section of this act.*

SEC. 8. *Be it enacted*, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings, and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. *Be it enacted*, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the de-

pots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office, shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swear falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. *Be it enacted*, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown, and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville, and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. *Be it enacted*, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. *Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed neces-*

sary to protect the interest of the State, and to secure the State against any loss IN CONSEQUENCE OF THE ISSUANCE OF BONDS UNDER THE PROVISIONS OF THIS ACT. BUT IN SUCH MANNER AS NOT TO IMPAIR THE VESTED RIGHTS OF THE STOCKHOLDERS OF THE COMPANIES.

SEC. 13. *Be it enacted*, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, *and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act;* and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable *for the payment of the bonds so fraudulently obtained* by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. *Be it enacted*, That in the event any of the roads, fixtures, or property belonging to any of said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said

agent shall purchase said road for the State, *the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act*, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. *Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided*, That should any of the companies hereinbefore enumerated have, *bona fide*, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments, for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. *Be it enacted*, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. *Provided*, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. *Provided*, that the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of

said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. *Be it enacted*, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. *Be it enacted*, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. *Be it enacted*, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the

Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits intended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four

years, in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. *That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever.* And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds, or the proceeds thereof, to the purposes aforesaid. *Provided*, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the president of any such company shall first deposit in the office of the Secretary of State, a full, true, and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. *Be it enacted*, That no road embraced in this act shall be entitled to State aid unless it shall, *within four years*, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows :

SEC. 7. *Be it further enacted*, That the different Internal Improvement Companies, to whom the bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. *Be it enacted*, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. *Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds*, in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orator shows that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so that the grading only of ten-mile sections was required, in lieu of the completion of said sections. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orator attaches hereto copies of said acts above referred to, marked Exhibit B, and makes them a part of his bill of complaint.

Your orator shows that there was delivered on account of the Memphis and Charleston Railroad and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth :

326 to 565, White, B, 240	$240,000
566 to 725, White, B, 160	160,000
1,506 to 1,705, White, B, 200	200,000
2,015 to 2,054, White, B, 40	40,000
2,055 to 2,154, White, B, 100	100,000
3,093 to 3,112, White, B, 20	20,000
3,403 to 3,537, White, B, 135	135,000
4,222 to 4,371, White, B, 50	50,000
4,392 to 4,441, White, B, 50	50,000
4,492 to 4,596, White, B, 105	105,000
~~902 to 1,101, Green, no letter, 200~~	~~200,000~~
~~3,351 to 3,450, Green, no letter, 100~~	~~100,000~~
~~3,568 to 3,667, Green, B, 300~~	~~300,000~~
	$1,700,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orator shows that the said bonds, to the amount of $1,700,000, were received by or on behalf of the Memphis and Charleston Railroad Company through the officers appointed in the act of February 11, 1852, and were, by the said company, negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be applied to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations. About nine hundred and sixty-three of the said bonds are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of thirty of said bonds, of $1,000 each, being of the numbers, dates, and descriptions in all respects of the bonds heretofore described and issued to the Memphis and Charleston Railroad Company by the State of Tennessee; and all of which bonds bear date on or before January 1, 1856.

Your orator is likewise the holder of seven coupons, attached to each one of said bonds, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the 1st of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds. Your orator shows that the holders of said bonds are very numerous, and reside in

foreign countries, as well as in different parts of the United States. Their names are in great part unknown to your orator, and they are therefore not made parties hereto.

And further complaining, your orator shows that the Memphis and Charleston Railroad Company has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orator's bonds, and on the bonds of other holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the Memphis and Charleston Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878, and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds, and those of other holders, and for the appointment of receivers, under the powers of this Court of equity, for the purposes described in the statute.

Your orator further shows that it is provided by the statute that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds loaned it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers to take possession and control of said railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orator shows that the said railroad company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of the interest or principal of your orator's bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of your orator's bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1869 and 1870, many years after the sale of the said bonds, and while the same were outstanding, in the hands of *bona fide* purchasers thereof.

The said company pretends that by the act of February 21, 1856, increasing the sinking fund to two per cent. per annum, to commence from the date of the issuance of internal improvement bonds, and providing for reinvestment of the accruing interest in the sinking fund, it was intended that deliveries of bonds into the sinking fund should constitute a discharge of the statutory lien on the road, without payment of interest or principal of the bonds loaned to the company. It claims a similar effect to be deduced from the act passed on 20th March, 1860. Copies of the said acts are herewith attached, marked Exhibit D.

The said company likewise pretends that, by means of the acts of February 25, 1869, and of January 2, 1870, it was enabled to extinguish the obligation to pay the interest and principal of the internal improvement bonds issued to it, by means of the delivery to the State of any obligations of the State, though the said obligations were not secured by a statutory lien upon the Memphis and Charleston Railroad, or issued in aid thereof. The defendant claims to have complied with the provisions of said acts, and to have thereby discharged the said incumbrance, without payment of the bonds for which it was responsible.

Your orator shows that the said pretense is fraudulent, and he charges the facts to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after

the war they still continued in great part in default in making the payments of interest on the said bonds. The State of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent. or less of their par value.

Under these circumstances, the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them. Their project was to treat the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. They purposed to induce the legislature to proceed upon this basis, and to assign the lien on each road, in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were the bonds loaned to and the obligations of the company delivering them, and were entitled to the lien on its road. They applied themselves to the procurement of such acts of the General Assembly of Tennessee as they deemed would assist them in the accomplishment of their projects.

Your orator shows that the General Assembly did pass an act on February 25, 1869, a copy of which is hereto attached, marked Exhibit E. Your orator shows that the said act, as passed, differed in material respects from the bill drafted by the agents of the corporations. It had been amended in the course of its passage through the assembly, so as to preserve the rights of the Internal Improvement bondholders to their liens on the several railroads.

Your orator shows that the railroad companies, not being content with the said act, and not deeming that they had thereby acquired even the appearance of legislative support for the project on which they desired to enter, procured, at the next session of the legislature, the introduction of a bill, which, as amended, became the act of Jan-

uary 2, 1870, a copy of which is hereto attached, marked Exhibit F.

Your orator further shows that the said last mentioned act, as passed, differed in material respects from the bill which the officials of the railroad corporations had procured to be introduced, as appears by the insertion of the provisions hereinafter referred to.

Your orator shows that about said time the officers of some of the railroad corporations obtained the opinion of counsel that they might safely embark on the venture above described, and disregard the rights and liens of the holders of the internal improvement bonds. Your orator prays leave to bring proof of said opinions on the trial, and particularly of the opinion of Edward H. East and others. Your orator shows that at the time the officials of some of the railroad companies offered the new or so-called substitution bonds for sale (which bonds they claimed had acquired the lien of your orator's bonds), they published an opinion of New York counsel seeking to show that the State had the right to treat the liens of the internal improvement bonds in the manner above described. The said transaction in all its entirety was fully understood by the railroad company, and by the purchasers of the new bonds, as appeared from the face of their bonds, the deed purporting to secure them, and the legal opinions above mentioned. They knew that they were engaged in an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the internal improvement bonds, for the payment of the interest and principal of their bonds.

Your orator further avers and shows that the said pretenses and claims are illegal and invalid and fraudulent. The defendants never had, nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orator charges that none of the aforesaid acts of the General Assembly purport to authorize the discharge of the lien of the internal improvement bonds, issued to the railroad company, in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The act of February 25, 1869, provides that the interest of the present bondholders of the State shall not be affected, and that railroad companies which have issued second-mortgage bonds, availing themselves of the provisions of that act, shall file with the comptroller, bonds of the same series as those loaned to such company, for which the State holds a first-mortgage lien. The act of January 2, 1870, requires that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund.

Your orator charges that, under and by virtue of the provisions of the general internal improvement law of February 11, 1852, the State of Tennessee was only secondarily liable for the bonds loaned by it to the Memphis and Charleston Railroad Company, and that the said company was primarily liable under the provisions of said act, for the payment of the principal and interest of said bonds. And your orator charges that the said acts were not applicable by their terms to the lien secured to the bonds issued in aid of the Memphis and Charleston Railroad Company.

Your orator further charges that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Memphis and Charleston Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By

the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the internal improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company, as the same accrued and became due.

Your orator charges that the aforesaid acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the contract aforesaid, and were in violation of the Federal Constitution, and void, and all acts committed thereunder are illegal and null.

Your orator likewise shows that, by virtue of his right in equity as a lienholder and the terms of the statutory mortgage above described, he is entitled to have the possession of the Memphis and Charleston Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, loaned to the Memphis and Charleston Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and your orator is unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the trusts aforesaid. Your orator shows that he is remediless at law and without the intervention of a court of equity.

Wherefore, your orator prays that the priority of the said lien of the internal improvement bonds and coupons aforesaid, upon all the railroad equipment, incomes, tolls, rights, privileges, property, and franchises of said Memphis and Charleston Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orator such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orator writs of subpena of the United States of America, to be directed to the said Memphis and Charleston Railroad Company, and the East Tennessee, Virginia and Georgia Railroad Company, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," *upon the terms and conditions mentioned in the act which this is intended to amend*, but to the extent of ten thousand dollars (instead of eight thousand) per mile. *Provided*, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. *Be it further enacted*, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia

Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. *Be it further enacted*, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. *Be it enacted*, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. *Be it enacted*, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. *Be it enacted*, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien

upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed February 11, 1852, whose charters, routes, or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. *Be it further enacted*, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee river, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, *provided further*, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. *Be it enacted*, That the bonds to be issued under the provisions of this Act shall, *in no case be sold at less than par*.

SEC. 9. *Be it further enacted*, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of internal improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston river at Magbie's ferry, or to the Holston river at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions, it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. *Be it enacted*, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. *Be it enacted*, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An act to establish a system of internal improvements in this State."

SEC. 12. *Be it further enacted*, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. *Be it enacted*, That the fourth section of an Act to establish a system of internal improvements in this State be amended by striking out the word *twenty* wherever it occurs in said section, and inserting the word *ten*, so as to allow all the railroad companies entitled to the benefits of said act, and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of *ten* miles instead of *twenty* miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee*, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency, and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency, and financial affairs of said company.

SEC. 2. *Be it further enacted*, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851–2, and the Act of February, 8, 1853–4.

SEC. 3. *Be it enacted*, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. *Be it further enacted*, That so much of the General Internal Improvement Acts of 1851–2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid Acts to have the bridges, abutments, and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments, and embankments which have been provided with State aid.

SEC. 5. *Be it enacted*, That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money, and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. **30.**

Will pay the bearer THIRTY DOLLARS, in the city of New York, on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
Comptroller.

Exhibit D.

ACT OF FEBRUARY 21, 1856.

AN ACT to aid in constructing a railroad from Chattanooga to the East Tennessee and Georgia Railroad, in the direction of Knoxville, and for the benefit of the East Tennessee and Virginia Railroad, and for other purposes.

. . . . . .

SEC. 5. *Be it further enacted*, That it shall be the duty of the several railroad companies in this State, who have received, or may hereafter receive, bonds of the State, or the indorsement of their bonds by the State to aid in the construction of their several roads, under the provisions of the act of 1851, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance or indorsement of their several bonds, annually to set apart and pay over to the Treasurer of the State two per cent. per annum upon all bonds which have been or may hereafter be issued or indorsed as aforesaid as a sinking fund for the ultimate redemption of the bonds issued or indorsed as aforesaid; which sinking fund, when paid over, the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee shall invest in the bonds of the State, and reinvest all accruing interest in like securities; and they are hereby constituted a board of commissioners for the management, government, and control of said sinking fund.

SEC. 6. *Be it further enacted*, That should any of said railroad companies fail, or refuse to comply with the provisions of the fifth section of this act, it shall be the duty of the Governor forthwith to notify the Attorney-General of the district in which is situated the place of business of said company failing or refusing as aforesaid, of the fact; and thereupon the Attorney-General shall immediately proceed against said company to collect said sinking fund, in the manner prescribed in the sixth section of the act entitled "An Act to establish a system of internal improvements in this State," passed February 11, 1852.

NEIL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHEM,
Speaker of the Senate.

ACT OF MARCH 20, 1860.

AN ACT to provide for the equalization and investment of the sinking fund, on the bonds issued to or indorsed for railroads in this State.

SECTION 1. *Be it enacted by the General Assembly of Tennessee*, That the money or bonds, that have heretofore or may be paid by the cities or railroad companies in this State to the Sinking Fund Commission-

ers by the 1st of January, 1860, together with the accruing interest thereon to that date, shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee.

SEC. 2. Said bonds shall all be canceled by said commissioners, and if indorsed bonds of any railroad company shall be canceled as hereinafter provided for the cancellation of State bonds, and shall be delivered over to said company or corporation, taking the president's of said company or the officers' of said company receipt for the same, which receipt shall be filed and a copy of the same placed upon a book, which the said commissioners shall keep for that purpose. If State bonds, they shall be canceled and filed in the office of the Secretary of State as hereinafter provided.

SEC. 3. That after the first day of January, 1860, all railroad companies or city corporations who have or may hereafter receive the bonds of the State, or its indorsement of their own bonds under the general internal improvement law of this State, or any other law, shall be required to pay two and one-half per cent. per annum as a sinking fund on the amount of the bonds so issued or indorsed by the State for said company or corporation, to be paid in equal installments on the first days of April and October, five years after the date of said bonds, and annually thereafter.

SEC. 4. All bonds issued during any one year shall be dated on the first day of January of that year.

SEC. 5. Said companies or corporations may pay said sinking fund in cash or in the like character of bonds that may have been issued or indorsed by the State for said company at their face or par value.

SEC. 6. If paid in money, the commissioners shall invest it immediately in the bonds of the State, and shall have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to such company or corporation.

SEC. 7. The sinking fund, when paid, in all cases shall be passed directly to the credit of said company or corporation, and be a release to said company or corporation from that amount due by them to the State. The commissioners shall issue a receipt to each company or corporation for such payment, retaining a duplicate in a well-bound book kept for that purpose.

SEC. 8. Each and every railroad company or city corporation shall provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to or indorsed by the State for said company as heretofore provided.

SEC. 9. The Comptroller of the State shall keep a regular account against each company or corporation, charging them with the amount of bonds originally issued to or indorsed for said company or corpora-

tion by the State, and crediting them by the amount of the sinking fund paid, and shall furnish the Treasurer of State a statement of the amount due by each company or corporation on the first day of June and December of each year, that he may know how much interest each company or corporation has to pay.

SEC. 10. The commissioners of the sinking fund shall cancel all bonds of the State as soon as paid in or purchased, by cutting out the Governor's and Secretary of State's names, and so defacing each coupon that it can not by possibility be used or circulated, and shall file the same in the Secretary of State's office.

SEC. 11. This law shall be in full force from and after its passage, and shall repeal all laws in conflict with it, but shall not be so construed as otherwise to affect any law on the subject of the sinking fund or the payment of interest due on State or indorsed bonds.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Exhibit E.

ACT OF FEBRUARY 25, 1869.

AN ACT to Liquidate the State Debt, contracted in aid of Railroad Companies in the State of Tennessee.

WHEREAS, under the General Internal Improvement Laws of the State, passed from time to time, aid has been granted to various railroad companies by the loaning of six per cent. bonds of the State, to enable said companies to iron, equip, build, and bridge, and for other purposes, which is now secured to the State by a first mortgage or lien on the franchise, property, and fixtures of respective railroad companies; and,

WHEREAS, it is desirable for the general welfare of the State, that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable; therefore,

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee,* That the respective railroad companies, or either of them that have created indebtedness to the State, are hereby authorized to repay any amount of the principal of such indebtedness as they have respectively created in the bonds of the State, in such amount, and at such times, as may be practicable:

Provided, however, that nothing in this Act shall be so construed as to release said railroad companies from any lien which the State may have on the same for any unpaid interest now due on said bonds of the State authorized to be surrendered by this Act.

SEC. 2. *Be it further enacted*, That any railroad company or companies repaying any indebtedness due the State under the provisions of this act, are authorized to issue bonds of equal amount and denomination with the bonds of the State paid and delivered up for cancellation, as hereinafter provided, which said railroad bonds, so issued in lieu of any amount of State bonds, shall be certified to by the comptroller, entered in a book to be kept for that purpose, with date, number, and amount, and shall be a lien, pro rata in amount and of equal validity and effect with the unretired part of the State indebtedness upon such railroad, and all its property, franchises, fixtures, and material.

SEC. 3. *Be it further enacted*, That in order to facilitate the railroad companies that may wish to avail themselves of the provisions of this act in paying the indebtedness due to the State, respectively, they, or any of them, are hereby authorized to consolidate their property, in whole or in part, with other railroad companies, and issue bonds and stock as provided for in the second section of this act, and may adopt the corporate franchise of either of the roads as the stockholders may elect, and each railroad company paying its indebtedness, and such railroad companies as may consolidate under the provisions of this act, are hereby authorized to determine, by a vote of the stockholders of said company or consolidated companies, the number of directors of such company, and elect the same under the new organization, and that the said directors, so elected, shall, according to the by-laws and rules of said corporation, elect one of their number president of said company.

SEC. 4. *Be it further enacted*, That the comptroller of the State shall receive from the railroad companies, or any of them, bonds of the State in such amounts as may be presented, and cancel the same in the presence of the officer or agent of the railroad company paying them in, and execute to the said railroad company or companies duplicate receipts for the amount and number of said bonds so paid in, and it shall further be the duty of the comptroller to certify on the bonds of any railroad company or companies repaying indebtedness due to the State, that the same has been paid, and that the so certified (bonds) are secured by first mortgage.

Provided, That said railroad companies shall liquidate their indebtedness prior to the maturity of the bonds that have caused said indebtedness; and be it further provided, that said bonds, when executed by the respective railroad companies or either of them, shall be deposited with the Comptroller of the State, whose duty it shall be to deliver said bonds, or any number of them, to the president and directors of the company, on the deposit by said president and directors or authorized agent of an equal amount of the six per cent. bonds of the State of Tennessee, with unpaid coupons attached, and the

company's first mortgage bonds, authorized to be issued by this act, shall have no validity or value except the comptroller's certificate is affixed on the face of each bond, that said bond is executed, and issued and by virtue of law taken the place of a bond of the State and is the first mortgage bond.

SEC. 5. *Be it further enacted*, That the comptroller shall be entitled to a fee of one dollar on each thousand dollars of the bonds certified as aforesaid, to be paid by the railroad company for which the same is done; and it shall be lawful for the comptroller to discharge the duties imposed by this act, by and through an agent in the city of New York; and all the provisions of this act shall attach to and become a part of the charter of any railroad company or companies acting under it.

SEC. 6. *Be it further enacted*, That by and with the consent of the board of directors of any railroad company in this State under the General Improvement Law, passed the 11th of February, 1852, and all the amendments thereto, that any person or corporation may, by paying the indebtedness of such railroad company to the State in the bonds of the State, as provided for by law, be, and they are hereby substituted and entitled to all the liens against said company for the payment of said debt that the State had or has by law, and the Governor and Secretary of State shall give such party or parties paying such indebtedness a certificate showing the facts, which shall be evidence against said company of such indebtedness to said individuals or corporations.

SEC. 7. *Be it further enacted*, That any person or persons may, with the consent and approbation of any railroad company which is indebted to, and for which the State of Tennessee holds a lien, pay the said debt, *so far as the State is concerned*, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of any railroad company with the consent of such railroad company, shall, upon filing with the treasurer of this State the written assent of said railroad company, under the corporate seal of said railroad company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being to place the person or persons so paying with the consent of said railroad company in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

SEC. 8. *Be it further enacted*, That any person or persons who may with the consent and approbation of any railroad company, pay any part or portion of the indebtedness of such company, as provided in Sec. —, shall have, hold, and be subrogated in all the rights, privileges,

and lien or liens of the State, to the extent of, and in proportion to, the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: *Provided, the passage of this act shall not decrease the lien of the State upon any railroad of the State until the entire claim of the State is fully liquidated,* OR AFFECT THE INTEREST OF THE PRESENT BONDHOLDERS OF THE STATE; *Provided, that railroad companies which have issued second mortgage bonds, availing themselves of the provisions of this act, shall file with the comptroller bonds of the same series as those loaned to such company, for which the State holds a first mortgage lien. Provided, the bonds to be issued by the company, under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and canceled.*

SEC. 9. *Be it further enacted,* That this act shall take effect from and after its passage.

Exhibit F.

ACT OF JANUARY 2, 1870.

AN ACT for the Payment of the State Debt.

SEC. 1. *Be it enacted by the General Assembly of the State of Tennessee,* That an Act entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, be, and the same is hereby amended, so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company, to pay into the State, in liquidation of the principal of said indebtedness, any of the legally-issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not.

SEC. 2. *Be it further enacted,* That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear, and all laws in conflict are hereby repealed. *Provided,* that when said railroad companies owe interest already due, coupons past due shall be taken by the comptroller or treasurer in discharge of such indebtedness for interest.

SEC. 3. *Be it further enacted,* That when any company, under the provisions of this act, shall pay into the treasury of the State bonds which have been issued by the State to said company, the said bonds

shall be canceled; but should any company, in discharge of its own debts, pay into the treasury any bonds that were issued to other companies that may still be indebted to the State, such bonds so paid in shall not be canceled, but shall be held by the State as purchased bonds, retaining a lien for the State upon the road to which said bonds were originally issued until the debt of said road to the State shall be fully discharged, when the bonds so held shall be canceled. *Provided*, that the provisions of this act shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund, now required by law, of the railroad companies of this State.

SEC. 4. *Be it further enacted*, That this act shall take effect from and after its passage.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE WESTERN DISTRICT OF TENNESSEE,

Sixth Judicial Circuit.

IN EQUITY.

CALVIN AMORY STEVENS, on behalf of holders of Internal Improvement Bonds of State of Tennessee, issued to the Memphis & Charleston Railroad Company,

versus

THE MEMPHIS & CHARLESTON COMPANY & THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY.

ANSWER.

HUMES & POSTON,
J. B. HEISKELL,
C. F. SOUTHMAYD,
Solicitors and of Counsel for Defendant.

IN THE

Circuit Court of the United States,

FOR THE

WESTERN DISTRICT OF TENNESSEE—SIXTH JUDICIAL CIRCUIT.

IN EQUITY.

THE JOINT AND SEPARATE ANSWER of the MEMPHIS & CHARLESTON RAILROAD COMPANY and of the EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY, defendants, to the Bill of Complaint of CALVIN AMORY STEPHENS, on behalf of himself and the other holders of the Internal Improvement Bonds loaned by the State of Tennessee to the Memphis & Charleston Railroad Company, who may come in and contribute to the expenses of the litigation.

These defendants now, and at all times hereafter, saving and reserving to itself all benefit and advantage of exception or otherwise that can or may be had or taken to the manifold errors, uncertainties and insufficiencies of the said bill of complaint, for answer thereunto, or unto so much thereof as this defendant is advised is material for them to answer unto, answering, saith :

That they admit that the Memphis & Charleston Railroad Company is a body politic and corporate, chartered by acts of the General Assembly of the State of Tennessee and that the object and purpose of the creation of said corporation by the said several charters was the construction, completion, and thereafter the operation and management of a line of railway for the transportation of passengers and freight from the city of Memphis, in the State or Tennessee, through the Territory of the State of Tennessee to a point on the southermost border of State, and that by the several charters and acts of incorporation of said corporation, such powers and authorities were granted, as in the said bill in that behalf is alleged, and that in the year 1877 the said corporation was, pursuant to law, leased to the East Tennessee, Virginia & Georgia Railroad Company, and that said defendant now possesses and operates the said Memphis and Charleston Railroad under said lease.

These defendants have not been furnished with a copy of Exhibit A, stated to be annexed to the bill, which is alleged to contain the several charters and acts with their several amendments passed by the Legislature of Tennessee, relative to said corporation, nor have these defendants in any way had inspection of such alleged schedule, and they cannot therefore admit the same, but require the complainant to make proof thereof, and these defendants refer to the originals or duly authenticated copies of such charters and acts, with their amendments, when the same shall be produced, and crave leave themselves to produce the same.

In further answering this bill the Memphis & Charleston Railroad Company will answer for itself, as the matters to be answered concern the affairs of that company, but the East Tennessee, Virginia &

Georgia Railroad Company adopts the same as its own ; but the words "this defendant" will be hereinafter used to designate the Memphis & Charleston Railroad Company.

And this defendant, further answering, denies that by or under the act of the General Assembly of the State of Tennessee, passed February 11th, 1852, in the bill in that behalf referred to, the said General Assembly of the State of Tennessee determined to lend or did lend to the railroad companies in that behalf in the bill mentioned, the aid of the credit of the State of Tennessee, for the completion of their several lines of railway or otherwise, but on the contrary, this defendant alleges that by and under said act, the State of Tennessee determined to make and did make loans to such railroad companies, respectively, of the coupon bonds of the said State, payable to the bearer, which were intended to be and in fact were sold and put in circulation as the liabilitios of said State, resting upon its public faith and credit, and upon that alone, and as being equal in value to, and the substantial equivalent of, the amount of money which by such bonds the State agreed to pay to the holder or bearer thereof, and that such bonds upon being thus loaned and delivered to said railroad companies, were so loaned by the State and were received by the companies, as being of the value of, and substantially equivalent to so much money loaned to such companies respectively by the State, and that by each such transaction there was created an indebtedness from the railroad company of the State, for the amount or value of such bonds so loaned to it.

This defendant admits that the Legislature of the State of Tennessee, did enact the Statute entitled "An Act to establish a system of Internal Improvement in this State," passed February 11th, 1852, a

copy whereof at large purports to be set forth in the bill of complaint, which copy so set forth is, as this defendant believes, nearly, though not entirely accurate, save that the punctuation thereof, in certain important particulars, is erroneously placed and given by the complainant in the copy so set forth, and that the italicizing and rendering in capitals certain portions thereof, is not warranted by anything contained in the original act, and is incorrect, and tends to mislead; and this defendant refers to the original act, or to a correct or duly authenticated copy thereof, when the same shall be prodnced, and craves leave to produce the same and make proof thereof itself; and this defendant denies each and every allegation or statement in the bill contained, purporting to set forth anything as the plan or scheme, or the purport or effect of said act, or of any provision thereof, which does not appear from the mere reading of the act itself, apart from, and without reference to or support from, such allegation or statement in the bill; and this defendant likewise denies each and every allegation or statement in the bill contained, relating to the plan or scheme, or purport or effect of said act, or of any part thereof, or of the legislation of which it formed part, or of the transactions had thereunder, or any part of them, which are inconsistent with or contrary to the allegations of this answer in relation to the same.

This defendant denies the allegation of the bill that by the said Act of February 11, 1852, a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued.

And for answer to the allegations of the bill, that, by the terms of an act of the same session, provision was made for a public and official record of the issues of bonds to the several roads, and that such

things were required to be done by the Comptroller and the Secretary of State, respectively, as in the bill in that behalf is alleged, this defendant saith, that the only legislative act to which such allegations can refer is a certain act entitled, "An Act to authorize the renewal of certain bonds of the State of Tennessee," passed February 21, 1852, the seventh, eighth and ninth sections of which act are set forth at large in the bill, and to the whole of which act, as appearing in the duly published legislative acts of said State, this defendant craves leave to refer as part of this answer, with like effect as if the same were here set out at large; and this defendant denies that the record thereby provided to be kept, of the issues of bonds to the several companies, was to be or was a public record, in any such sense as to be of right open to inspection of the public or of holders of Tennessee State bonds; and this defendant avers that such system of numbering of the State bonds issued and loaned to the railroad companies, respectively, under the Act of 1851-2, and the preservation of a record thereof, was in no respect for the use or benefit of the holders of the Tennessee State Bonds loaned to the railroad companies, and had no reference whatever to any right or lien, or supposed right or lien, of such State bondholders as against the railroad companies or their roads. And this defendant avers that the State of Tennessee had always been accustomed to keep a record of the numbers and particulars of all the bonds issued by it for whatsoever purpose, and that the provision made by law for such record in respect of the bonds issued under the Internal Improvement Act of the session of 1851-2 merely placed those bonds in this respect upon the like footing with the bonds issued by the State for its own purposes, resting solely upon its faith and credit, and in respect of which there could be no

pretence of the existence of any lien whatever in favor of any one upon anything.

And this defendant wholly and absolutely denies the allegations of the bill, to the effect that the tenor of the act which gave existence to the bonds was, that each company became liable upon and bound to perform the obligations contained in and represented by the bonds loaned to it, and that each company was to pay from its own means the interest upon the bonds loaned to it as the same matured from time to time, and also to pay and discharge the principal debt as it was expressed upon said bond when the same matured, and each and every part of said allegations.

And upon the contrary, this defendant saith that the railroad company did not become liable upon the bonds at all, nor did it by or under the act, or otherwise howsoever, become in any way bound or liable to the holder of the bond; the name of the railroad company did not and does not in any way appear in or upon the bond, either as maker, surety, endorser, guarantor, or otherwise, and there was nothing anywhere contained, in, upon or about the bond, to indicate that the railroad company had, or ever had had, any connection whatever with it, nor even that the bond had ever passed through its hands. The only obligation contained in or represented by the bond is the obligation of the State of Tennessee, to pay to the holder the principal and interest due thereon as the same matures, an obligation with which the company had nothing to do.

In respect of the interest which should from time to time accrue and become payable upon the bonds loaned by the State to a railroad company, under said Act of February 11, 1852, the railroad company did not assume nor agree to pay such interest to the holders of the State bonds, nor was it in anywise subject to any liability or obligation so to do,

nor was the statutory lien or mortgage conditioned for any such payment by it; but the only agreement and undertaking of the company, and the only condition of the statutory lien or mortgage in that behalf was, that the railroad company should, fifteen days before such interest should become due from the State to its creditors, pay the amount of such interest to the State, leaving the State to pay its own interest, through its own fiscal agent, to its creditors. That the Bank of Tennessee, at Nashville, by deposit in which bank the payment of the amount of such interest was by the act aforesaid required to be made by the railroad company to the State, was a bank established and wholly owned, controlled and managed by the State, which had furnished or agreed to furnish its entire capital of five million dollars, and was responsible for the performance of its obligations, the said bank having been created by an Act of the Legislature of said State of Tennessee, passed January 19, 1838, entitled "An Act to establish a State Bank, to raise a fund for internal improvement and to aid in the establishment of a system of education;" by which act it was, among other thing, declared and provided, that said bank should be, and was thereby established in the name and for the benefit of the State, and that the faith and credit of the State were thereby pledged for the support of the said bank, and to supply any deficiency in the funds thereinafter specifically pledged, and to give indemnity for all losses arising from such deficiency; to the whole of which Legislative Act establishing said bank and the amendments made thereto, this defendant craves leave to refer as a part of this answer with like effect as if the same were here set forth at large. And this defendant saith, that at the time of the passing of the said Act of February 11, 1852, as well as for many years prior and subse-

quent thereto, the said Bank of Tennessee was the sole fiscal agent of the said State, and there all the funds of the State were kept, and the State's disbursements were all made, either by checks or drafts of the State officials upon said bank, or directly by the bank as the State's fiscal agent and on its behalf, without such check or draft, and the said bank was, in substance and effect, the Treasury of the State of Tennessee, and the payment made by the railroad company, in pursuance of said act, of the amount of such interest upon the bonds loaned to it, by depositing the same in said bank, was to be, and was, a payment to the State and into its Treasury, and a full and complete discharge of all obligations of the railroad company, for or in respect of the amount of such interest so deposited or paid in.

And this defendant further saith that in the practical course of business from the time of the first issuing of bonds on loan to the railroad companies under the said Act of February 11, 1852, up to the time when the difficulties growing out of the war prevented alike the railroad companies and the State from meeting their obligations, the railroad companies never kept their accounts with a view to pay, never paid or were called upon to pay the interest upon the bonds which had been loaned to them, to the holders of such bonds, or of the coupons for such interest, but the railroad companies made their payments for or in respect of the amount of such interest, to the State of Tennessee, by depositing the same in the Bank of Tennessee, and the said bank received such payments for and on behalf of the State, and carried the same, as the State's money, into one general fund, which was applicable to the payment of the interest on all the bonds of the State, of whatever class, as well as for the other purposes of the

State; and into which fund were carried, in one general mass and without separation or discrimination, all the moneys so paid in by the railroad companies for interest due by them, and all other sums received by the bank from various other sources, which were applicable to the payment of the interest on the State bonds of whatsoever class; and out of such general fund the said bank, as the fiscal agent of, and for and on behalf of the State, either, itself, or through its own (*i. e.*, the said bank's), financial agents or correspondents in the Eastern or Atlantic States, where the interest was by the terms of the bonds and coupons payable, paid the interest on the bonds of the State, of all kinds and classes, charging all said interest to the general account, as paid by the said bank for the State, and without any separation or discrimination in respect of or between the bonds which had been loaned to the respective railroad companies, or between such bonds and other bonds of the State which had been issued for other purposes, or in respect of the interest falling due upon such different issues or classes of bonds respectively, and that the provisions of the 5th Section of the said Act of February 11, 1852, were enacted in view and contemplation of such course of business and practical action; which course of business was well understood by the State bondholders, in so far as they were concerned therewith.

And this defendant denies, that by the terms or provisions of the said Act of February 11, 1852, a railroad company receiving a loan of State bonds thereunder, was to pay or discharge the principal of such bonds when the same matured, but on the contrary, this defendant saith, that the plan and scheme was, and in accordance therewith were the terms and provisions of said act, that the railroad company was to make payment and satisfaction to

the State, of its indebtedness for the principal or capital of the State bonds so loaned to it, in installments from time to time before the maturity of said bonds, and before the payment of such principal should be made or become due to the holder of the bond, which payments should be so made in successive yearly installments, commencing at the expiration of five years from the completion of the railroad, for aiding which the loan was made, and should be to the extent of one per cent. each year, upon the amount of bonds originally loaned to said company, and should be made, not in money, but in Tennessee State bonds, the amount of which payments should be credited upon account of the railroad company's indebtedness to the State for the bonds which had been so loaned to it; and that the same, with the accumulations of interest thereon, should be used and applied by the State, by way of sinking fund, for the payment of the principal amount of the bonds loaned to such railroad company, as by the seventh eection of said Act of February 11, 1852, will more fully appear; that by the said act it was provided, that the State bonds loaned thereunder to the railroad companies should have not less than thirty nor more than forty years to run, and, in fact, nearly all the said bonds, as actually issued, had about, or nearly, forty years to run from the date of their issue. It appears, by calculation, that yearly payments of one per cent. upon the capital of a debt, with interest thereon at the rate of six per cent. per annum, compounded and applied according to the usual rules and principles of a sinking fund, will extinguish the capital of such debt in thirty-three years and two months, or thereabouts; and the general plan, purpose and design, of the Act of February 11, 1852, and the expectation of the State authorities in enacting it, was, that by means of such annual payments

of one per cent. upon the original capital, and the accumulations of interest for which, upon or by reason of such annual payments, the company would be entitled to credit upon account of its indebtedness to the State, the railroad companies respectively would, about, or nearly, have paid and satisfied their indebtedness to the State for the bonds loaned to them under said act, before the time when the State would be called upon, according to the terms of the bonds, to pay the same to the holder thereof; whereupon it would be the State's duty to pay such bonds to its creditors as its own proper debt, without any recourse over against the railroad companies in respect thereof, or any further claim or demand against them, for or in respect of the loan to them, of such bonds. Inasmuch, however, as the annual payments of one per cent. were not to commence until five years after the completion of the respective roads, as to which completion there might be more or less delay, and as there might be lack of punctuality in some of the companies in making such annual payments of one per cent., it was at the time of the enactment of the law perceived, that when the State bonds loaned to a company should mature, there might be a balance remaining due from the company to the State for the bonds which had been loaned to it, after giving it the proper credits for the said annual payments of one per cent. upon account of such indebtedness and for the accumulations of the interest thereon, and it was to provide for this state of facts and for the collection of such balance, that there were enacted the provisions of the sixth section of the said act, for the filing of a bill in Chancery by the State against the railroad company, in case of default of the latter to pay at the time of the maturity of the bonds, the amount then due by the company to the State in respect thereof; and such provisions were

not intended and cannot be construed, so as to authorize the State to file a bill in Chancery for the collection of that portion of the original debt contracted by the company to it upon the loaning of the bonds which had been already paid to the State by the company, and which payments, it was expressly provided by the seventh section, should be credited to the company by the State ; the State could have no possible right, either in law or equity, to demand or receive such double payment, nor would or could the decreeing such double payment be a measure "to indemnify the State against any loss on account of the issuance of said bonds," nor could such a decree be deemed one "best for the interest of the State," such as by the provisions of the sixth section the Court is required to render.

It was not at all contemplated by the act, that when the State should have occasion to file such a bill in Chancery against a defaulting railroad company, as was provided by the sixth section, after the maturity of the bonds, such suit in Chancery should be one in which the State bondholder would have any interest, directly or indirectly ; for, before the time of the filing of such bill, his bond would have matured and the State would, of course, have paid it to him, in preservation of its plighted faith and credit and honor, and at the time of the passing of said Act of February 11, 1852, it was not within even the remotest contemplation of any one, that the State of Tennessee would ever go to protest upon, or permit to be dishonored or remain unpaid at maturity, any of its obligations.

And this defendant further alleges that partly because of the above-mentioned circumstance, that the said sinking fund payments of one per cent. per annum required from the railroad companies by the seventh section of the said act of February 11, 1852, might not be sufficient to satisfy and extinguish the

company's indebtedness to the State, by the time when the bonds would mature and require to be paid by the State, so that an addition to the sinking fund payments might be requisite in order to make adequate provision for the satisfaction of the indebtedness by the time of the maturity of the bonds, and partly for other causes and considerations, making it material to the interest of the State to possess all such power in other respects as were reserved by it as next hereinafter mentioned, the State, by the twelfth section of the said act of February 11, 1852, did enact and declare as follows, viz.:

"SEC. 12. Be it enacted that the State of Tennessee expressly reserves the right to enact, by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies."

And this defendant saith, that in the exercise of such reserved powers, the State of Tennessee afterwards enacted the Law of February 21, 1856, raising the Sinking Fund payments required from the railroad companies, from one per cent. to two per cent. per annum, and providing for sale of the road, under decree in Chancery, upon a bill filed by the State for such purpose, in case of default by such railroad company to make such Sinking Fund payments, a copy of which act is set out in a schedule to the bill, and also the Act of March 20, 1860, a copy whereof is also set out in a schedule to the bill, raising such Sinking Fund payments required from the companies to two and a half per cent. per annum, and containing divers

other provisions material to the matters in controversy in this suit, to which act at large this defendant refers as part of the answer.

And this defendant alleges that the said acts of February 21, 1856, and March 20, 1860, respectively, were clearly within the powers reserved by the State to itself as aforesaid, and that by force of such acts respectively, the railroad companies became absolutely required to make the additional payments thereby required, upon account of their indebtedness for the bonds loaned to them, to be used by the State by way of Sinking Fund as aforesaid, and were subject, in case of default on their part in making such payments, as well to the remedy in that behalf, provided by said Act of February, 21, 1856, as to that provided by the Act of February 11, 1852; and that the said Acts of February 21, 1856, and March 20, 1860, became and were in all respects operative and effectual, according to their tenor, as well in respect of their effect upon any and all rights or supposed rights or liens on behalf of the State bondholders against the railroad companies, or upon their roads, under the original Act of February 11, 1852, if any such rights or liens on behalf of the State bondholders ever existed (which this defendant wholly denies), as otherwise.

And further answering the bill, this defendant admits that in the third section of the said Act of February 11, 1852, there does occur the expression, that so soon as the bonds shall have been issued for the first section of the road they shall constitute a lien upon said section, and that the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due; but this defendant wholly denies that the provision, or any

other provision of the said act relating to the lien thereby created or provided for, or to the obligations of the railroad companies in relation to the bonds loaned to them, was enacted or made, in order to ensure the sale of or make a market for said bonds, or to create confidence in the public, or on the part of persons to whom said bonds might be offered for sale, or who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or that in case of its failure ample security should be provided therefor, which might be easily realized, or for any of such alleged purposes or objects, or for any such or similar purpose or object, or purposes or objects, or in any way for the use or benefit of the holders of the State's bonds, or to induce the purchase or facilitate the negotiation of such bonds.

And this defendant alleges, that even upon a mere strict reading of the said third section, without regarding the context and the other sections, and the plainly evident meaning and purpose of the entire act, all of which are in entire hostility to the claim now asserted by the complainant in this regard, it is plain that the said third section has no such construction or effect as the complainant now claims. It declares, *not* at all that the *bonds themselves shall be a lien* in favor of their holders, but that the *issuing of the bonds* by the State to the railroad company, shall *constitute*, *i. e.*, give rise to or *create*, a lien in favor of the State, which lien was to be so constituted and created immediately upon the issue and delivery of the bonds by the State to the railroad company, and while, as yet, there was no holder of the bonds, other than the railroad company itself. Moreover, this expression that "the bonds shall constitute a lien" occurs nowhere else than in the third section of the act, and

is there limited to the first section of the road, and to the bonds issued in aid of that section, and it could not have been designed that the State bondholders should hold or be entitled to the lien under that section separately, for it is subsequently provided in the fourth section, that when the whole of the road shall be completed, the State of Tennessee shall be invested with a lien, without a deed from the company, upon the entire road with its appurtenances, for the payment of the bonds, "as provided in the act," and that said lien or mortgage of the State shall have priority over all other claims existing, or to exist, against the company. This final lien of the State upon the entire road upon its completion, was clearly to supersede and take the place of the State's previous fragmentary liens upon the separate sections, and the declaration of such ultimate lien of the State, superior to all other claims, is clearly inconsistent with the idea of a separate lien upon the first section of the road in favor of the State bondholders under the third section of the act; and such finally perfected lien of the State was a statutory mortgage in favor of the State alone, upon the entire road and its appurtenances, conditioned merely for the making by the company of the payments which were provided in the said act, which payments were provided so to be made, not to the State bondholders, but to the State, and as to both principal and interest respectively, in advance of the time when such principal and interest respectively would be payable to the holder of the State's bonds.

And this defendant submits and insists that it is apparent, from a careful consideration of the entire act, embracing all its provisions, and its manifest objects, designs and purposes, its language, referring again and again to "the lien or mortgage of the State," and the remedies provided for the enforce-

ment of the lien, all of which are reserved to the State alone, without even the slightest mention or recognition of any right or interest of the State bondholders, and the necessary operation of such remedies when put in force, that the statutory lien thereby created was and is solely a lien belonging to the State, taken by it for its own benefit and for its own security exclusively, in or in respect whereof the State's bondholders had no right or interest, legal or equitable, nor any power of interference; that under the act, and in virtue of the loan of the bonds to the company thereunder, there was imposed upon the company no obligation for double payment of the amount or any part of the amount, either principal or interest, of the bonds loaned to it, but only an obligation for single payment thereof, which payment when made would be in full, complete and final discharge to it for the amount paid, and which single payment, as before stated, was conditioned and required to be made to the State alone, and that the act created not two liens, but one lien, and not a double but a single lien, which belonged exclusively to the State, and was conditioned only for such single payment to it as aforesaid.

And this defendant saith that the construction of the act claimed by the complainant, which obligates the railroad company to pay the State's bond to the holder thereof, on which the company's name nowhere even appears, and after the company has, under the working of the scheme provided by the act under which the bond was issued, fully paid the State for the bond originally loaned to it, so as to make the bond clearly payable by the State, as its own proper debt, without any recourse or claim on its behalf against the company in respect thereof, is, in substance and effect, an attempt to charge the railroad company, as guarantor or surety, for the

State's debt; and this defendant saith that at the time of the passage of the said act of February 11th, 1852, as well as for many years prior thereto, it was, and it ever since has been, the statutory law of the State of Tennessee that no action shall be brought, whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized; and that at all such times there was in existence a statutory law of the State of New York of substantially similar purport, and of like effect.

And this defendant saith that the transactions of receiving the State bonds by the Memphis & Charleston Railroad Company upon loan thereof to it by the State, under the act of February 11, 1852, and the amendments thereof, respectively took place in the State of Tennessee, and the negotiations, disposal and transfers of said bonds by said railroad company took place either in Tennessee or in the State of New York; and this defendant sets up and claim the benefit of the statutes above referred to of said States respectively, commonly called the Statute of Frauds, by by way of defense against the complainant's attempt, on behalf of himself and other Tennessee State bondholders, to charge this defendant or its property with liability for the State bonds, originally loaned to the Memphis & Charleston Railroad Company; and this defendant saith that it never made any such promise or agreement in writing, nor any note or memorandum thereof, either itself or by any authorized agent, and never made or assumed in any way any such obligation or undertaking nor any promise or undertak-

ing whatever, to the complainant, or to any holder of any of the State bonds loaned to this respondent, to guaranty or become responsible for, or to make payment of, or to subject its railroad or any of its property to liability for either the principal or interest, or any part thereof, of any such State bonds; and that it insists that no such obligation or responsibility can, under the circumstances aforesaid, be implied or deduced from anything contained in the said act, and, moreover, such a construction of the act would be in violation of the provisions of the constitution of Tennessee hereinafter referred to.

And this defendant further saith, that, under the general laws of Tennessee in force at the time of the passage of the said act of February 11, 1852, and ever since, all mortgages and deeds of trust must be in writing and duly registered, or they are null and void as to existing or subsequent creditors of the makers. And by the Constitution of Tennessee, in force at the time of the passage of the said act of February 11, 1852, it was ordained that the Legislature should have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land.

Upon the complainants' construction of the said act of February 11, 1852, that the lien or mortgage upon the railroads, thereby created, belongs to the individuals holding the bonds, the said act would be unconstitutional, as suspending in their favor the general registry law, inasmuch as the act provides that the mortgage lien shall exist without any deed from the company, and have priority without registration over all other claims against the company; while, upon this defendant's construction, that the lien belonged to the State, the act is free from any such constitutional objection, the State not being

subject to the constitutional restrictions above referred to.

And this defendant admits and alleges that the State of Tennessee, by an act of its General Assembly, passed on the 8th of February, 1854, amendatory of the said Internal Improvement Act of February 11, 1852, increased the amount of State bonds, to be issued to the railroad companies thereunder, from eight thousand to ten thousand dollars per mile, and required that such increased amount of bonds should be received upon the terms and conditions mentioned in said original act, and this defendant supposes what is set forth in a schedule annexed to the bill, as a copy of such act of February 8, 1854, to be substantially or nearly correct, but for greater certainty it craves leave to refer, as part of this answer, to such original act, or a duly authenticated copy thereof; and this defendant saith that such act of February 8th, 1854, enlarging the amount of the mortgage liens originally provided for, was passed while the construction of the roads and the issuing of the State bonds therefor was in progress, and such enlargement of the lien, by concurrence of the State and the companies alone, without the slightest reference to any assent or dissent of the holders of the State bonds already issued, is a cotemporaneous exposition of the understanding and design of the State in relation to the nature, effect and ownership of the statutory lien under the act thus amended, and clearly evinces that such lien was regarded as one belonging wholly to and within the control of the State, and in respect of which the State bondholder had no rights or interests.

And this defendant further says, that, by the second section of the said act of February 8, 1854, provision was made for the issuing of additional amounts of the State bonds to the railway companies having to build bridges across certain large

rivers, upon the terms and conditions mentioned in the act of February 4th, 1852, entitled "An Act to aid in the completion of the East Tennesssee & Georgia Railroad," except the second section thereof, and also in the fifth and sixth sections of the act of February 26, 1852, entitled "An Act to charter the Chattanooga, Blue Spring & Cleveland Railroad Company, and for other purposes." And this defendant craves leave to refer, as part of this answer, to said last above-mentioned act of February 4th, 1852, or to a duly authenticated copy thereof, and especially to the the first, second and third sections thereof.

And this defendant admits the acts of February 17, 1854, and January 19, 1855, in the bill set forth, the one decreasing the length of the sections necessary to be completed in order to obtain the State bonds, from twenty miles to ten miles, and the other requiring the ten-mile sections to be graded only, instead of requiring them to be completed.

And this defendant, further answering, denies that there were delivered on account of or to the Memphis & Charleston Railroad Company, under or in virtue of the said Internal Improvement Act of February 4, 1852, or under the same as from time to time amended, bonds of the State of Tennessee, to the amount of ($1,700,000) seventeen hundred thousand dollars, as in the bill alleged. This defendant did receive, under all the acts for the issue of bonds to railroads, including bridge money, 1,700 bonds of $1,000 each; but how much thereof were under the Bridge Acts of February 4 and February 26, 1852, and how much of bonds issued under said Act of February 11, 1852, and the various amendments thereof, and what are the dates and numbers, respectively, of the bonds so issued to said company under said act of February 11, 1852, and under the same as from time to time amended, this defendant

saith it is uninformed and unable to answer; that it in no manner kept any memorandum, entry or record of the dates or numbers or letters of the bonds issued to it, excepting of the numbers of 135 of said bonds received March, 1856, being numbers 3,403 to 3,537, which defendant's bookkeeper happened to enter on the books; and this defendant requires the complainant to prove the same, except the numbers above stated, and also to prove the purposes for which the same issued. And this defendant denies the allegation of the bill that the proceeds of the sale or negotiations of these bonds were to be applied to enable the company to which they were loaned to earn the interest and principal moneys of the said obligations, though it admits that such proceeds were to be applied as by the said act of February 11, 1852, is in that behalf provided.

And this defendant saith that it is ignorant and uninformed, and unable to answer, as to whether about nine hundred and sixty-three, or as to how many, of the said bonds loaned by the State of Tennessee to the Memphis & Charleston Railroad Company are now outstanding in the hands of *bona fide* or other holders. It may be that a considerable amount of such bonds now remain outstanding as a debt against the State of Tennessee, though to what amount it is ignorant, and requires the same to be proved, and it saith that such outstanding bonds are not, and never were, due or owing by this defendant, nor were they liens in favor of the holders thereof upon the railroad of this defendant, or any part thereof.

This defendant saith that it believes Exhibit C, annexed to the bill, to be substantially or nearly, a correct copy of the form of the bonds loaned to the said railroad company, under the Internal Improvement Acts, but for greater certainty refers to the

originals of such bonds when produced, which production it requires; and it says that it believes there were some variations in the forms of said bonds, but that all of them were in effect payable to bearer, and in some cases so stated, by the use of that word, and where purporting to be payable to order, were made out to blank or order, leaving the blank unfilled, so as to make the bonds payable in effect to bearer; or if the blank was filled, it was with the name of some one other than the railroad company, and by such person endorsed in blank.

And this defendant is wholly ignorant and uninformed as to whether the complainant is the owner or holder of the fifteen bonds in the bill in that behalf mentioned, heretofore issued to this defendant by the State of Tennessee, or any of the same, or of the coupons in the bill alleged to be held by the complainant or any of the same, and it therefore denies the allegations of the bill in these respects, and requires the complainant to make strict proof thereof.

And this defendant wholly denies the allegations of the bill, to the effect that this defendant has failed to comply with the provisions of the general internal improvement law, in the bill mentioned, for the payment of the instalments of interest on the bonds alleged to be held by complainant, and on the bonds of other holders in like situation, and each and every part of such allegations, although this defendants admits and says, that in respect of a large amount of interest which became due prior to July 1, 1877, upon the State bonds loaned to this defendant under the act of February 11, 1852, and the amendments thereof, this defendant did make default in the payments which by the terms and conditions of the act it was obligated to make to the State, for and in respect of the amount of such interest, but the defendant saith

that full settlement and satisfaction for such default has long since been made, and the amount of such interest; in respect whereof there was such default, has been duly paid and satisfied to or adjusted and arranged with the State of Tennessee, and no default in respect thereof now exists.

And in respect of the allegations of the bill to the effect that defaults have occurred upon the coupons which fell due and became payable on January 1 and July 1, 1876; January 1 and July 1, 1877; January 1 and July 1, 1878, and January 1, 1879, and upon the now outstanding Tennessee State Bonds, which were originally loaned to this defendant, and which in the bill are alleged to have become payable by this defendant, according to the terms of the statute, and that the State of Tennessee is likewise in default on said coupons, this defendant saith, it supposes, that inasmuch as the State of Tennessee has failed to pay the interest which, since January 1, 1876, inclusive, has fallen due upon its bonds of any and all classes, that such coupons remain due and unpaid upon such of said bonds as remain outstanding as valid debts of the State of Tennessee, and that the same are in legal default as against the State, if payment thereof has been duly demanded; but this defendant wholly denies that any such coupons, falling due on and subsequent to January 1, 1878, ever became or were due or payable by this defendant by the terms of the statute or otherwise, or that this defendant ever has been in default in respect thereof, and upon the contrary, this defendant saith that not only was the said railroad company never under any original obligation to pay such interest to the holder of the bonds or coupons, but that all the obligations which it ever assumed for the payment to the State of Tennessee, or in any way, of any amount of interest, for or in respect to the State bonds, loaned to it un-

der the said Act of February 11, 1852, and its amendments, have been duly and fully paid and satisfied, and fully and completely released and discharged, or that as to any balance of interest and as to the principal, the same has by the State been transferred, as hereinbefore shown, to the parties named herein.

This defendant wholly denies the allegations of the bill, to the effect that the complainant is entitled to the enforcement of the lien in the bill alleged and claimed, for the payment of the bonds alleged to be held by him, and those of other holders, and for the appointment of Receivers under the powers of this court, as a Court of Equity for the purposes described in the statute, and each and every part of such allegations; and upon the contrary this defendant besides insisting, as it does, that no such lien exists, likewise insists that if it did, it would not be enforceable in a court of law or equity, nor could such a court lawfully appoint a Receiver or Receivers, but that the lien originally created by the act belonged exclusively to the State of Tennessee, a Sovereign, and was within its exclusive power and control, not subject to any power or authority in any court to interfere therewith, and that the right and power of appointing a Receiver or Receivers under said act was vested exclusively in the Governor of the State of Tennessee, or in the said State exercisable through its Governor, and that no power to appoint such Receiver or Receivers, if it can be held that there is under the act any cause or ground for such appointment, or to interfere with the exclusive right, power and authority of the Governor or the State in respect thereto, is or ever was vested in this or any other court.

And for answer to the allegations of the bill, to the effect that it is provided by the statute that upon default in the payment of interest by any of the

Internal Improvement companies upon the bonds loaned to it, the right to impound the rents, issues, profits and dividends shall accrue for the purpose of paying over the same towards the liquidation of the unpaid interest, and that for the execution of that purpose it provides that some suitable person or persons shall be appointed as Receivers, to take possession and control of said railroad, and all the assets thereof, and that said Receiver is to continue in possession and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds, this defendant denies the same except in so far as such allegations are in conformity with the provisions of the fifth section of the said Act of February 11, 1852, to which fifth section this defendant hereby refers as determinative in this regard.

And this defendant saith, that the Receivership provided for by the said fifth section was in no respect a remedy provided for or on behalf of the holders of the State bonds, nor were such bondholders, by the terms and provisions of said fifth section, to have any right or interest in such proceeding, or in the fruits thereof, and that the net proceeds realized by means of such Receivership, from the earnings or operation of the road, were, by the express terms of the said fifth section, to be paid by Receiver, not to the holders of the State's bonds, or of the coupons upon them, but deposited in the Treasury of the State, and in the said fifth section, as set out at large in the bill, the word "balance" is erroneously printed instead of "balances," where the word occurs immediately preceding the words "shall be deposited in the Treasury of the State." Having reference to the financial strength of the State of Tennessee, and its unquestioned credit at

the time of the passage of the said Act of February 11, 1852, which had never been tarnished by even a single default in punctually meeting all its financial obligations, it would be manifest that it must have been contemplated by the act, that in case a railroad company should not have fulfilled its obligation to furnish to the State in the manner required by the act, the amount requisite to provide for the interest falling due on the bonds loaned to the company, the State would, of course, make punctual payment to its creditors, out of its other resources, of the interest becoming due to them, and that the idea could not have been at that time for a moment entertained by any one; that in case a company should fail to make the necessary payment to provide for the interest, the State should or would go to protest upon its obligation, and leave its creditor to wait for payment of his due, until the State could collect it out of property of a company to which the State might have loaned the bonds; but this was not even left to implication, for in this very section the State made the necessary appropriation for the punctual fulfillment of its own obligations to its creditors, in case of the occurrence of such default of a company as above referred to, by means of the last clause of the fifth section, directing the Comptroller, in such case, to draw his warrant upon the Treasury, for the sum of money necessary to meet (*i. e.* pay at maturity), the interest of such bonds "as might not be provided for by the company as provided in the act."

And it is manifest that the provisions of said fifth section, directing the appointment of a Receiver or Receivers "to receive said rents, issues, profits and dividends, and pay over the same under direction of the Governor *towards the liquidation of such unpaid interest*," and that the Receivership shall continue until a sufficient sum shall be realized thereby

"*to pay off and discharge the interest as aforesaid due on said bonds*," refer to the interest due and unpaid from the company to the State, upon the company's indebtedness to the State in respect to the bonds loaned to it, and not to interest actually due and unpaid upon the bonds themselves from the State to the bondholder; inasmuch as the Comptroller would, under the mandate of said fifth section, have met and paid such interest to the State creditors when it fell due, only fifteen days after the time when the company was guilty of the default, first giving cause for setting in motion the proceedings for a Receivership: and inasmuch as, after such default occurring, the Comptroller was to make report thereof to the Governor, and then, the Governor must fix upon, designate and appoint a Receiver, who must accept, qualify and furnish approved security, and then proceedings were to be taken for putting the Receiver in possession, through the sheriffs of the different Counties, in case such possession were not voluntarily given, the space of fifteen days would be hardly sufficient for getting the Receiver into quiet possession, and if it were so, and if there were left any fragment of the fifteen days, the net earnings for which might have passed into the hands of the Receiver, before the day when the Comptroller was absolutely required by the law to meet and pay the interest falling due to the State's creditors, it is plain that such net earnings for such brief period, of a road in such desperate condition as to be obliged to subject itself to a Receivership, could furnish no appreciable or substantial proportion of the sum required to pay a full six months' interest on the bonds loaned to said company under said Act of Feb. 11, 1852.

This defendant admits that it does claim and insist, though it denies that there is any pretence therein, that the lien on its property, that is to say

on the Memphis & Charleston Railroad, with its appurtenances and equipment, which was originally created by and under the said Act of February 11, 1852, and under the amendments thereof from time to time, and by the loan to the said railroad company of the Tennessee State bonds thereunder, has been purchased from the State, and that this defendant has been absolved and discharged from any and all obligation which it ever assumed by the acceptance and use of the said bonds, or in any way, to make any payment to any one for or in respect of either the interest or principal of such bonds, except to the assignee of the State, and that such purchase and transfer have been accomplished, made and effected, as hereinafter more particularly set forth, and this without reference to the question whether such State bonds, or the sums of interest falling due thereon, have or have not been paid by the State to the holders of such bonds, or of the coupons for such interest, with which question this defendant never had anything to do, this defendant expressly denying, as aforesaid, that it ever assumed or entered into any obligation or undertaking in that regard to the holders of the State bonds.

And this defendant, further answering, saith, that on or about the 25th of July, 1877, under and in pursuance of the provisions of the 7th section of the Act of the General Assembly of the State of Tennessee, entitled an act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee, passed February 25th, 1869, and the other laws of the State of Tennessee in that behalf, Adrien Iselin, Sr., and Adrien Iselin, Jr., by and with the consent and approbation of this defendant, paid and delivered to the State of Tennessee through her proper officers acting on behalf of the said State, an amount of bonds and coupons

of the State equal to the amount then due, or owing from this defendant to the State for, or in respect of the principal and interest of all the State bonds loaned or issued by the State of Tennessee to this defendant, to wit: the sum of seven hundred and thirty-six thousand nine hundred and six dollars twenty-five cents, together with the interest thereon, from July 1st, 1877, to said 25th of July; which bonds and coupons, respectively, were such as under the said legislative acts of the State of Tennessee, were properly receivable by the State for settlement with it of the amount of such indeptedness, and as the consideration of its assignment and transfer of such indebtedness, and the lien to secure the same to the parties making to it such payment. And at the same time there was filed with the Treasurer of the State of Tennessee such written assent of this defendant, under its corporate seal, as required by the 7th section of the said Act of 1869, and that thereupon the said lien of the State was in due form assigned and transferred by the State, through her proper officers acting in that behalf, to the said Iselin, by an instrument duly executed and delivered to them by the Governor and Secretary of the State of Tennessee, the recitals in which instrument were and are true, a copy whereof is to this answer annexed in a schedule marked "A," which this defendant prays may be taken as a part of this answer.

And this defendant avers, that the said lien was in no manner abandoned or extinguished, but was preserved, kept alive, and assigned and transferred to the said Iselins, who held the same, subject to the terms of the said indenture.

And this defendant further saith, that on or about the 20th of August, 1877, there was duly made, executed and delivered a certain indenture of that date between said A. Iselin, Sr., and said A.

Iselin, Jr., of the first part, the Farmers' Loan & Trust Company of the second part, and this defendant of the third part, a copy whereof is hereto annexed, marked "Schedule B," the recitals contained in which indenture were and are true. And this defendant prays the said recitals, and all the matters in said last mentioned indenture set forth or alleged, may be taken as a part of this answer with the like effect as if the same were here repeated and herein directly alleged.

And this respondent further saith, that the said Iselins, by the said indenture, transferred and assigned their said lien and interest, so obtained as aforesaid, to the Farmers' Loan & Trust Company, a corporation duly created by the laws of New York, and residing in the State of New York, and being a citizen thereof, upon certain trusts therein stated, and the same are now held accordingly by said Farmers' Loan & Trust Company.

At the same time, by another indenture herewith exhibited, marked "Schedule C," and prayed to be taken as part of this answer, this defendant conveyed to the said Farmers' Loan & Trust Company, all of this said railroad with all its appurtenances and properties, franchises and privileges, of every kind, in Tennessee, Mississippi and Alabama, upon certain trusts therein set forth particularly, to secure certain bonds to be issued by this defendant, not to exceed the sum of four million seven hundred thousand dollars, of which one million four hundred thousand dollars being Nos. 1 to 1,400 of said bonds were to be issued to and belong to said A. Iselin, Sr., and A. Iselin, Jr., under certain arrangements more fully set forth in said indentures. And this defendant saith, the said 1,400 bonds have issued to the said Iselins, and they have received and taken the same and made all the arrangements, purchases

of bonds, payments and purchases of liens in good faith and with the belief that the State of Tennessee had the right to the said lien, and to sell and dispose of the same for her sole indemnity and security.

And this defendant further avers and pleads that the said Iselins are citizens of the State of New York and of the City of New York, and that they are still the holders of a portion of the said 1,400 bonds, and that they have passed by delivery other portions of said bonds to divers other persons, who or whose transferees now hold the same, and all of which 1,400 bonds, as well as the said debt assigned by the State to said Iselin, now remain outstanding and unpaid, save that the interest which has accrued and fallen due of said 1,400 bonds has been paid, and this defendant does aver and plead that the said Farmers' Loan & Trust Company are the owners of the said lien, and are entitled to be heard in defence of their rights under the said purchase, and are indispensable parties to this proceeding, without whom the same can in no manner proceed or be maintained, nor can any effectual or binding decree or adjudication be had thereon upon the matters set forth in the bill, or the relief prayed therein, such as will protect these respondents from further litigation, and from decrees in favor of the said Farmers' Loan & Trust Company, or the said holders of the said 1,400 bonds, inconsistent with the decrees of this court in this cause. Wherefore these respondents ask the benefit of a plea of want of necessary parties; and that they be not further proceeded against until the said present owners of the liens, viz., the Farmers' Loan & Trust Company, be made parties to this bill, and that the bill be dismissed.

This defendant admits and avers that it insists and claims, denying that there is any pretence in so

claiming, that not only by the Acts of February 21, 1856, and March 20, 1860, in the bill in that behalf referred to, but likewise by the original Act of February 11, 1852, it was intended, and so by the law plainly enacted and declared, that the delivery or payment over to the State of the annual sums thereby required to be so paid by the railway company, viz., one per cent. in Tennessee State Bonds, according to the provision of the original Act of 1852, two per cent. according to the provisions of the Act of 1856, and two and a half per cent. according to the provisions of the Act of 1860, which sums, with all accumulations of interest thereon, were to be kept invested in Tennessee State Bonds, without any restriction as to the class of such bonds or the purpose for which they might have been issued, and which payments were to be used and applied by the State by way of sinking fund, should constitute a discharge to the company making such delivery or payment, of the statutory lien on its road, to the extent of the amount of such annual payments *and of the accumulations of interest thereon;* and this defendant insists that this conclusion follows inevitably from the provision of the Act, that the amount of such payment shall be credited by the State to the company on account of the bonds issued to the said company—which presupposes an indebtedness for the amount of such bonds, from the company to the State, against which debt was to be made such credit; and inasmuch as the statutory lien was created solely to secure such indebtedness, a reduction of such indebtedness by a payment credited thereon, must reduce *pro tanto* the lien securing such indebtedness, and as any suit for enforcing the lien for the purpose of making any collection of principal, must under the provisions of the Act be brought by the State, and the

decree therein is required to be such as should indemnify the State against loss, and as should be for its interest, a credit, by law required to be given by the complainant in such suit to the defendant, must necessarily reduce by so much the amount of the decree or recovery therein; and this defendant admits that it does claim and insist, that such credit upon the debt and proportionate discharge of the lien therefor was and is wholly irrespective of the question of the State's payment or non-payment to its creditors of the principal and interest of its bonds loaned to the company; for which payment by the State, the company, as before stated, was in nowise responsible.

And this defendant admits that it does insist and claim, though it denies that there is any pretence therein, that by means of and under the Acts of February 25, 1869, and January 2, 1870, and the purchase aforesaid made in accordance therewith, from the State of Tennessee, as herein mentioned, this defendant has been fully discharged of all the indebtedness and obligations of this defendant for or in respect of the State bonds originally loaned by the State of Tennessee to this company, as well in respect of principal as of interest, and that thereby the statutory lien or incumbrance for or in respect of the bonds so loaned has been and is assigned, and this without reference to the question, whether such bonds or the interest coupons thereof have or have not been paid to their holders by the State, this defendant, denying that it was in anywise responsible for any such payment to the State's creditors; and this defendant admits that it does claim and insist that under the said Acts of 1869, and 1870, it was not requisite that the State bonds delivered to the State in purchase of such lien and incumbrance as aforesaid, should be bonds secured by a statutory lien upon the Memphis & Charleston Railroad or

issued in aid thereof, but the same might be Tennessee State bonds issued for any purpose.

This defendant admits and alleges that the State of Tennessee did enact two several statutes, one entitled "An Act to liquidate the State's debt contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, and the other entitled "An Act for the payment of the State Debt," passed January 2, 1870, to which this defendant craves leave to refer as part of his answer with like effect as if the same were set forth at large; and this defendant believes that what are set forth in the schedule to the bill as copies of such acts are in most, though not in all respects, correct copies thereof, and for greater accuracy this defendant refers to the original acts, or to duly authenticated copies thereof, which it will produce; and this defendant denies each and all of the allegations of the bill relating to the tenor, effect, objects or purposes of such acts respectively, or the alleged objects, purposes, projects, motives or acts of any parties who may have been or are alleged to have been instrumental in procuring, urging or seeking the passage of such acts or either of them, except in so far as the same may appear from the mere reading of the acts, apart from and unaided and unsupported by the allegations of the bill, or from the statements of this answer in respect thereof.

And especially this defendant denies all the allegations of the bill imputing fraud, wrongful conduct or impropriety of any kind to any of the persons who may have been instrumental in seeking or obtaining the passage of said Acts of February 25, 1869, and January 2, 1870, or either of them, or to any of the railroad companies, in respect of their acts and proceedings under or by virtue of such acts or either of them.

And this defendant saith, it is true that during

the late civil war the railroad companies did not generally pay the interest on the amounts of the bonds issued to them, and after the war they still continued, in great part, in default in making the payments due by them to the State on account of such interest, and the State of Tennessee, during the same period, likewise had been and was in default in paying the interest on its bonds, and the market value of the State bonds had fallen very greatly, and the value and market price of the State bonds had become and was very much depreciated; such depreciation varied greatly and with wide fluctuations, the market price at times being considerably below and at other times considerably above fifty per cent. And this defendant saith that the events of the war had inflicted enormous losses upon the State of Tennessee and upon its people; and besides and apart from the depreciation of its railroad interests and claims, had greatly diminished the resources and means of the State and the ability which it would otherwise have possessed to meet its obligations to its creditors; and that the railroad companies which had respectively received the loans of the State bonds under the Internal improvement Acts, had, by the events of the war, sustained enormous losses and depreciations of their property; and the events consequent upon the war had also depreciated the comparative business and profitableness of their railroads; and the roads themselves, and their bridges and other appurtenances and equipments and materials, amidst the conflicts of the contending armies and under the spirit of lawlessness thereby engendered, became greatly dilapidated, wasted, injured, and, to a large extent, destroyed, so as to require very large expenditures for rehabiiltating them and putting them in suitable condition for profitable working, and to make them efficient instruments for

affording the facilities for travel and transportation required by the wants of the community; and in the then condition of the companies, pecuniarily depressed, financially embarrassed and discredited, it was, as to the best of the roads, extremely difficult, and to many of them utterly impossible to extricate them from embarrassment or make them serviceable instruments of travel or transportation under their then organization and indebtedness, or to make them available for practical value or working, short of selling them out for what they might be made to bring by enforcement of the liens against them.

And at the time of the said legislation of 1869–70, the bond debt of the State of Tennessee, including the accumulations of unpaid interest, had become swollen to some forty millions of dollars, or thereabouts, which was greatly beyond the practical ability of the State to meet or then satisfactorily deal with, unless some particular measures of relief could be adopted; and it was then greatly desired by the State of Tennessee and among its people, that some means should be devised for largely reducing the amount of its indebtedness, and bringing the same within such compass as that it might be enabled as speedily as possible to resume payment of its interests.

And under this state of things it was regarded, not merely by the said railroad companies, but by the governing authorities of the State of Tennessee, and by the the people of the State generally, as desirable that some plan should be adopted for reducing the State debt, by inducing the railroad companies or such of them as could possibly command or obtain the means for doing so, to arrange and adjust at once, and without waiting for the full maturity of their legal obligations in that behalf, the amounts of their indebtedness to the State for the amounts of the State bonds

which had been loaned to them under the Internal Improvement Acts, and that in order to afford adequate inducements to the railroad companies so to do, as likewise to bring it practically within their power to command or obtain the means therefor, such payments should be received from them in State bonds, so as to give to them the benefit of the discounts at which purchases of such bonds by them in the market might then be practicable, and so as to permit the transfer or substitution of the statuory mortgage of the State for securing the company's indebtedness to it, to such parties as could be induced to advance the money wherewith to purchase the State bonds to effect the settlement of the company's indebtedness, and it was to give effect to such plans and schemes, and not for any purpose, fraudulent, wrongful, or in anywise inequitable, that the said legislation of 1869–70 was enacted. It was at the time considered by all parties whose legal or equitable interests were concerned in respect thereof, and, as this defendant conceives and now insists, rightly so considered, that such plan and scheme and the execution thereof, in so far as such execution should prove practicable, would be beneficial to all concerned, and unjust to no one; that it would be so as to the State, because thereby it would secure the immediate realization and collection, not by compromise or under discount, but at par, dollar for dollar of both principal and interest, of a large indebtedness then owing to it from the railroad companies not yet due, except to the extent of the amounts in arrear of the annual payments on account of principal, due under the sinking fund provisions, and which indebtedness, as it then stood, was to a large extent then presently unavailable by way of resources to the State, and in respect of which indebtedness, unless some such plan for its settlement were adopted, there was

danger of large eventual loss to the State in consequence of eventual inability of the companies to pay it in full; that it would be so to the companies, inasmuch as, by shifting their creditors from the State of Tennessee to the bondholders of the companies, who would make their loans for fixed terms without requiring such annual payments on account of principal, as the State, under its laws, exacted, the companies would escape the perils, which as to nearly all of them was imminent, of having their roads sold out under enforcement of the State's lien, by reason of their inability to meet the annual payments on account of principal of their indebtedness to the State, which would be required of them by the law, and also perhaps by reason of the discounts of which they would gain the advantage upon the purchases in market of the State bonds, the amount of which discount, if any part thereof were left, after paying such premium or compensation as might have to be paid to the parties advancing the money for such purchases, upon the security of the new or substitution bonds of the company authorized by the act, might go to reduce the large losses which the *bona fide* stockholders of the companies, whose money had gone into the roads, had sustained by the losses and depreciations consequent upon the war, in case anything were left for the stockholders, after paying the company's other debts; and that it would be so to the State bondholders in the general, inasmuch as the natural tendency of creating by such a scheme the necessity and thereby the demand for the very large amount of Tennessee State bonds which the parties would have to purchase for such purpose, would be to increase the value and market price of the State bonds, as in the result proved to be the case very largely; and as to such of the State bondholders as might not choose to sell their

bonds at the market price even as thus raised, the intrinsic value and future price of their bonds would naturally be raised, by reason of the very large reduction of the aggregate of the State's debt accomplished by the working of the scheme, and the increase thereby of the State's credit and probable ability to resume payment of its current interest within a reasonable period, and it was at that time confidently anticipated that the State, after the large reduction of its aggregate indebtedness as contemplated to be accomplished by means of the working of the said scheme, would be enabled to and would resume payment of its interest, and in realization of such anticipations, the State did, after its aggregate indebtedness had been reduced to the extent of about or nearly twenty millions by the working of such scheme, and after having funded certain portions of its interest, resume payment of its current interest, and it did for a year and a half or thereabouts pay the same, but the calculations which had been made as to the extent of its resources and practical means in comparison with its indebtedness even as thus reduced, proving to be over sanguine and being disappointed, the State again suspended payment of its interest, and still remains in default thereon; but this state of things was not anticipated when it resumed, nor when the scheme of the Acts of 1869–70 was conceived and carried out as a step preparatory to such resumption; and it was further considered at the time of the said legislation of 1869–70, and of the settlement thereunder of the debts of the railroad companies to the State, and plainly so with truth, that while such settlements under and in pursuance of said acts would be beneficial, alike to the State, the railroad companies and the State bondholders in general as aforesaid, no particular State bondholders would be in anywise aggrieved

or sustain any loss or injury thereby ; for, although the company would make a profit by the discount on purchases of the bonds, no bondholder would sell at such discount unless it was his choice and desire to sell, and he would get a better price than he would have gotten if the special demand and raising of the market price in the execution of the scheme aforesaid, had not occurred.

And this defendant saith that it was upon the views above set forth that the managers of the defendant's company acted, in favoring this passage of the said Acts of 1869 and 1870, and in such action as was taken by this defendant's company under and in pursuance of said acts, and not with any fraudulent, wrongful, improper or inequitable views or purposes, as in the bill is most untruly alleged.

And this defendant further saith that the said legislation of 1869-70 met at the time thereof the general approval and concurrence, not only of the State authorities and Legislature, and of the companies, but of the State bondholders in general, and that there was no opposition thereto or remonstrance against the same by or on behalf of any of the State bondholders, although, while the said bills were pending in the Legislature previous to their final passage, the fact of their being so pending was notorious and well known to and amongst the great mass of the State bondholders. And these defendants allege, upon information and belief, that the fact of such bills being so pending before the Legislature was at the time well known to the complainant and to the then holder or holders of the bonds which the complainant now claims to own or hold, and that neither the complainant nor such then holder or holders made any opposition to or remonstrance against such legislation, but they respectively acquiesced therein ; and further that the com-

plainant and the then holder or holders of the bonds which he now claims to own or hold, as well as the other Tennessee State bondholders, or a great proportion of them, were well aware, before and at the time of the occurrence thereof respectively of the intentions of divers of the said railroad companies who made settlements under and in pursuance of said acts of 1869 and 1870, with the State, for their indebtedness to the State, for the State bonds loaned to them under the Internal Improvement Acts, to make such settlements under said acts with the State as in full satisfaction of such indebtedness, and in full and complete discharge of the statutory lien for or in respect of the bonds loaned to such companies respectively, by paying to the State in such full and complete satisfaction and discharge, Tennessee State bonds at par, not being bonds which had been loaned to the companies making such settlements, except in so far as bonds of that character might by chance be included in the bonds purchased or acquired by the said companies for the purpose of making such settlements and likewise of the actual making of such settlements accordingly, when and as the same were made or being made, and likewise of the fact that such companies were about to obtain and were obtaining the means with which to purchase or acquire the Tennessee State bonds to be used and paid to the State in such settlements, from parties advancing the same upon faith of the said Legislative Acts of 1869–70, and the things done and to be done in pursuance thereof, and upon the understanding by such parties, that by means of such payments to the State in any State bonds at par, of the amounts of the indebtedness of the railroad companies to the State for or in respect of the State bonds loaned to them, all obligation of such companies so making such payments respectively, for or in respect to the

amounts of principal and interest of the State bonds so loaned to them, and all the statutory lien or liens therefor, would be fully satisfied, released and discharged, and that the new bonds to be given to the parties furnishing such money, being made mortgage liens upon the roads of said companies respectively, would be valid liens thereon respectively, wholly free and discharged from any statutory lien for or in respect of the amount of said State bonds originally loaned to the company under the Internal Improvement Acts, and subsequently settled for as aforesaid; and this respondent says that complainant and such former holder or holders of the bonds he now claims to hold and other Tennessee bondholders were well aware that this respondent had authorized certain parties to make the arrangement herein set forth, whereby the lien of the State should be transferred under the 7th section of said Act of 1870, and that they were buying bonds therefor, and that they were about to pay the same to the State for and upon the purchase from the State of the lien of the State for the security of the respondent's said indebtedness for bonds, and that they well knew of the advances and the transfer; and notwithstanding the complainant and such former holder and holders of the bonds he now claims to hold, and the other Tennessee State bondholders as aforesaid, were aware of the several matters aforesaid, he and they never objected to the doing or intended doing of any such acts as in discharge or transfer of such lien, nor gave any notification or intimation of any objection on his or their part thereto, nor of any claim on his or their part that such lien could not be discharged or assigned short of actual payment and satisfaction to the holder thereof of the State's bonds originally loaned to such railway companies, and which loan gave origin to the debt so settled with the State; but he and they

respectively, wilfully neglected to make any such objection, or give any such notice or intimation, and upon the contrary stood by, and without objection, notification or intimation of any right or claim on his or their part to the contrary, saw such settlements and transfer about to be made, and actually made by the companies with and by the State, and the moneys necessary for the purpose or acquisition of the State bonds wherewith to make such settlements or purchase about to be obtained and actually obtained from the parties advancing the same as aforesaid, under the understanding upon the part of such companies and of the parties advancing such moneys to them as aforesaid, that such settlements by the companies with the State, and such payments to the State in any State bonds as aforesaid, would be a full and complete discharge or effect a transfer of all obligation of said companies for or in respect of such bonds which had been so loaned to them and of the statutory liens therefor, and that since the said settlements and transfer respectively, and during the time of the long delays and laches of the State bondholders in respect of disaffirming the same after knowledge thereof, if the State was legally their trustee, and if they had any such right of disaffirmance, the market price and the value of Tennessee State bonds and of debts and claims against the State of Tennessee, has from other causes very greatly declined; and this respondent has made large payments, and assumed new liabilities in consequence of such new arrangements, by reason whereof this defendant insists that the complainant is now equitably estopped from setting up, as against this defendant or its property, the claim which he now asserts, in this suit, if such claim could otherwise have any legal merit or validity which this defendant nevertheless wholly denies.

And furrher answering, this defendant admits

that the said legislative acts of 1869 and 1870, and the arrangements made thereunder by this defendant and the other companies with the State, proceeded upon the basis and understanding that the statutory lien upon the property of the companies for or in respect of the amount of principal and interest of the bonds loaned to them under the said Internal Improvement Act of February 11, 1852, was the sole and the absolute property of the State, completely and exclusively controllable by it, and which it could realize and discharge or sell as it might see fit, and that the holders of the State bonds which had been loaned to the company upon whose property the statutory lien in favor of the State existed, had no interest in or title to such statutory lien, either as beneficiaries of a trust or otherwise.

And this defendant denies the allegations of the bill to the effect that by the terms of the General Improvement Law of February 11, 1852, the State of Tennessee constituted herself the Trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act, and that the terms of such alleged trust were defined and set forth in the sections of the statute, and each and every part of such allegations.

It admits and says, that not merely by the acceptance of the bonds and the use of their proceeds by this defendant, but by the mere receipt by the company of the bonds loaned to it, and before any negotiation of such bonds or use of such proceeds, a mortgage lien attached to the property of the company without a deed from it, and the conditions of that mortgage were as prescribed by the statute, but it wholly denies the allegations of the bill, that by the purchase of said bonds, the holders thereof became entitled by contract to the lien rights set forth in the Internal Improvement Law, and

that that lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company as the same accrued and became due, and each and every part of such allegations, and it wholly denies all the allegations of the bill, to the effect that there was a contract and lien created and entered into by and between the holders of the Internal Improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as alleged Trustee of the said lien or mortgage, and the railroad company, as the alleged debtor under said alleged contract and lien, and likewise the allegation of the bill that there was an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the Internal Improvement Bonds for the payment of the interest and principal of their bonds, and each and every part of each and all of said allegations.

And to the contrary of the several allegations of the bill above denied, this defendant saith, that the said statutory mortgage was taken by the State on its own behalf, and for its own exclusive benefit and security, and not as a Trustee for its bondholders, and that said statutory mortgage was conditioned solely for the payment by the company to the State for the company's indebtedness to the State for the bonds loaned to it, and in respect of both principal and interest, such payment was conditioned to be made by the company to the State before the corresponding amount of interest or principal would become due or payable by the State to the holder of the State bond; that instead of there being, as alleged by the complainant, as the legal effect of the transaction, a single indebtedness to the State bondholder, wherein, though the State was primary debtor in form, the railroad company was primary debtor in fact, and the State merely

that the said legislative acts of 1869 and 1870, and the arrangements made thereunder by this defendant and the other companies with the State, proceeded upon the basis and understanding that the statutory lien upon the property of the companies for or in respect of the amount of principal and interest of the bonds loaned to them under the said Internal Improvement Act of February 11, 1852, was the sole and the absolute property of the State, completely and exclusively controllable by it, and which it could realize and discharge or sell as it might see fit, and that the holders of the State bonds which had been loaned to the company upon whose property the statutory lien in favor of the State existed, had no interest in or title to such statutory lien, either as beneficiaries of a trust or otherwise.

And this defendant denies the allegations of the bill to the effect that by the terms of the General Improvement Law of February 11, 1852, the State of Tennessee constituted herself the Trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act, and that the terms of such alleged trust were defined and set forth in the sections of the statute, and each and every part of such allegations.

It admits and says, that not merely by the acceptance of the bonds and the use of their proceeds by this defendant, but by the mere receipt by the company of the bonds loaned to it, and before any negotiation of such bonds or use of such proceeds, a mortgage lien attached to the property of the company without a deed from it, and the conditions of that mortgage were as prescribed by the statute, but it wholly denies the allegations of the bill, that by the purchase of said bonds, the holders thereof became entitled by contract to the lien rights set forth in the Intermal Improvement Law, and

that that lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company as the same accrued and became due, and each and every part of such allegations, and it wholly denies all the allegations of the bill, to the effect that there was a contract and lien created and entered into by and between the holders of the Internal Improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as alleged Trustee of the said lien or mortgage, and the railroad company, as the alleged debtor under said alleged contract and lien, and likewise the allegation of the bill that there was an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the Internal Improvement Bonds for the payment of the interest and principal of their bonds, and each and every part of each and all of said allegations.

And to the contrary of the several allegations of the bill above denied, this defendant saith, that the said statutory mortgage was taken by the State on its own behalf, and for its own exclusive benefit and security, and not as a Trustee for its bondholders, and that said statutory mortgage was conditioned solely for the payment by the company to the State for the company's indebtedness to the State for the bonds loaned to it, and in respect of both principal and interest, such payment was conditioned to be made by the company to the State before the corresponding amount of interest or principal would become due or payable by the State to the holder of the State bond; that instead of there being, as alleged by the complainant, as the legal effect of the transaction, a single indebtedness to the State bondholder, wherein, though the State was primary debtor in form, the railroad company was primary debtor in fact, and the State merely

its surety, and a mortgage by the real primary debtor to the real surety conditioned for the payment by the assumed primary debtor to the assumed sole creditor of this single debt, or for the indemnification of the assumed surety against the same, there were two entirely independent and disconnected debts, one from the State to its bondholders upon its simple bonds payable to bearer, resting purely upon its faith and credit, and which were purchased in reliance upon such public faith and credit, and upon nothing else, by the bondholders, who never knew or even heard of the railroad company as having any connection with the transaction, and for payment of which bonds, either principal or interest to the holder, the railroad company never assumed any obligation whatever, either primary or secondary—and the other an indebtedness from the railroad company to the State, for the amount of the State bonds loaned to it, which were loaned and borrowed as being (as in fact they were) of value equal to, and the equivalent of so much money, and in respect whereof it made no difference in effect whether the State borrowed the money on its simple bonds, and lent the money to the company, or lent to the company the bonds which were convertible into money at will; and that the statutory mortgage was given solely to secure this latter direct and absolute indebtedness from the railroad company to the State, with which the State bondholders had no connection or concern whatever, either legally or equitably, and the mortgage given to secure this direct indebtedness to the State was not taken nor held upon any trust either express or implied for the benefit of the State bondholders.

But this defendant further saith, that even if the complainant's views of what indebtedness it was, which was secured by the statutory mortgage, and

of the relations of the parties respectively towards each other in respect of such indebtedness, were assumed to be correct, no trust, interest, or other legal or equitable interest of the State bondholders in respect of the statutory mortgage would exist, or be enforceable in any court of law or equity. No such trust or other interest of the State bondholders was declared or indicated, or in any way referred to by the statute ; the trust or equitable interest could be claimed by the State bondholders, only in virtue of the principle of equity law, which entitles a creditor to lay hold in equity of a counter security for the debt given to one of his debtors, who stands in the relation of surety for the debt, by the other who is primarily liable therefor, and this principle of equity law applicable in the transactions of private persons or corporations, is not applicable where the debtor, taking the counter security for its protection and security in respect of its liability, is the Sovereign power of the State: and the law has been so settled by the Supreme Court of the United States.

And if this were not universally the rule in respect of counter securities taken bya Sovereighn power, this defendant insists that where the security in question is created merely by means of a statute enacted by the Sovereign, possessing plenary power thereby to take the security in such shape and with such incidents as it wills, and by such statute it takes a statutory mortgage security to itself as sole mortgagee, *without declaring any trust* or providing for such interest of the creditor, and the question arises, as one merely of the true intent and meaning of the statute, whether the Sovereign intended thereby to subject itself to have such security taken out of its hands, or its management and control thereof interfered with by its creditors, through the action of courts or otherwise, there can be no implication that such

was its intent, meaning, or will ; and there can be no intendment, in the absence of an express declration to that effect, that the Sovereignty contemplated its own bankruptcy or insolveucy ; but the presumption of law is, that the plighted faith of the Sovereign was to be and was regarded as an all-sufficient security, to those who might prefer to lend their money upon a security of such nature, instead of one enforceable in courts of law or equity.

And this defendant, further answeriug, saith that the Tennessee State bonds which were loaned to this defendant, and to the other railroad companies, respectively, under the Internal Improvement Act of February 11, 1852, and from time to time under the same as amended, were issued, sold, negotiated and purchased, and from time to time thereafter sold, purchased, dealt in and in all respects treated and regarded, as being merely bonds of the said State, resting for their security and payment purely upon the faith and credit of the State, and upon nothing else, and without any understanding or idea of there being an additional security therefor to or for the benefit of the holder thereof, in the shape of a lien upon a railroad, or otherwise ; that, upon the negotiation, sale or disposal of such bonds by the railroad companies to whom the same had been respectively loaned, the purchasers or takers of such bonds did not come into communication in any way with the railroad companies, respectively, nor at all know them in the transaction, nor know that the bonds had been loaned to them, or that they had or ever had had anything to do with the same ; but the bonds, being securities payable to bearer were sold in open market, chiefly through brokers or bankers, and purchased by the takers thereof, as being purely and simply State bonds, without any other obligation or security therefor than the faith

and credit of the State, and the subsequent dealings and transactions in said bonds, as from time to time they were sold or negotioated and passed from hand to hand, were all upon the same basis and footing and understanding ; that at the time of the passing of the Internal Improvement Act of February 11th, 1852, the six per cent. bonds of the State of Tennessee which had been issued in order to raise a part of the capital of the State's bank, and to pay for the construction of the capitol bnilding, and for various other uses and purposes, and which were purely and simply State bonds, in respect of which there could be no idea or pretence for an idea of there being any security therefor other than the mere liability of the State, readily commanded in market, not only par but a premium. That as the bonds loaned to the railroad companies uuder the Act of February 11, 1852, and under the same as amended from time to time, and for which the State held the statutory lien aforesaid, were sold in market they were sold and purchased at precisely the like rates and prices as the Tennessee State bonds issued for the State's own purposes, and in respect of which there was no lien or pretence of lien of any kind: and this complete uniformity of price and market value, of the Tennessee bonds of all kinds of classes, unaffected by the question whether the same were of a class, in respect of a loan of which the State held a statutory lien under the Internal Improvement Act of 1852, or of another class for or in connection with which there was no lien of any kind in favor of any one, always existed, and has continued up to the time of the institution of this suit, and even up to the present time, except, perhaps, in some few instances where the persistent efforts of the complainant and those associated with him in the assault upon the railroad companies of Tennessee, may have produced some trifling difference.

And this defendant further saith, that the values of the different railroads in aid of which the State's bonds were loaned under the Act of 1852 and its amendments, and upon which the statutory lien existed, in comparison with the amounts of such liens respectively, were widely different; in some instances the value of the roads was such as to afford full security for the amount of the lien, and sufficient, if the lien could be grasped by the State bondholder, to make his bond good to him for its face, irrespective of the liability of the State of Tennessee therefor; in other cases, the value of the road was such, as if the State bondholder were entitled to it, to make a considerable and substantial, though not a complete security to him for his bond, after the State of Tennessee fell into pecuniary embarrassment and discredit; and in other cases, the roads had proved to be of very little value, and the companies owning them entirely insolvent, so that the lien, if the State bondholder were entitled to it, would have been little or no value to him by way of supplement to the security afforded by the liability of the State of Tennessee, and in some instances this condition of insolvency, and substantial worthlessness of the roads, had become fully developed before the commencement of the civil war; yet, notwithstanding all these great differences in the circumstances aforesaid, there never has been any difference whatever in the value or market price of the bonds, which had been loaned to the different companies, but they were all bought and sold at the same price, and at the like price as aforesaid as the State bonds, for or in connection with which there was no lien, or pretence of a lien of any kind. And so in respect of the five per cent. Tennessee State Bonds, which had been issued for various purposes, and for or in connection with which there was no lien or pretence of a lien of any

kind; there was the like uniformity of the value and market price thereof with the six per cent. bonds of the various different classes hereinbefore mentioned, with only the difference attributable to the lower rate of interest; nor was there ever any difference in value or market prices of bonds loaned to the railroad companies under the Internal Improvement Acts, between those of such bonds which were issued before and those which were issued after the Act of March 20, 1860, nor did any of the State bondholders ever remonstrate against or object to that act, or the operation or effect thereof, or of the provisions therein contained, but they all, if they might or could rightfully have objected thereto, which this defendant in no wise admits but wholly denies, fully and completely acquiesced therein.

And this defendant saith, that at all times from the time of the passage of the Act of February 11, 1852, the State of Tennessee, by its statutes from time to time enacted, and to which this defendant craves leave to refer from the public statute books, and by its action in all other respects, assumed and exercised the right to control and deal with the statutory liens reserved to it under said act, and under the same as amended, as its sole right and property, under its exclusive control and for its benefit, as it might see fit, and that the State bondholders never objected thereto nor disputed such its right and power in that behalf, but they fully acquiesced therein.

And this defendant saith, that from about the time of the commencement of the war in 1861 up to the present time, the State of Tennessee has failed to pay the interest upon its bonds, as well those loaned to the railroad companies under the Internal Improvement Acts as the others, and has paid no such interest except the small amount of current in-

terest paid after the resumption in 1874 and 1875, and a comparatively small amount of interest paid in or about 1866-7, and except that large amounts of such interest in arrear have been, with assent of the holders of the coupons therefor, funded into new bonds of the State, but that nevertheless, no suit, claim or proceeding on the part of any of the holders of the State bonds loaned to the railroad companies under the Internal Improvement Acts, asserting any lien or claim for such unpaid interest against the said railroad companies, or any of them, or upon their property, was ever brought or made until the time when the complainant commenced this suit and the other suits of like character which he commenced at or about the same time against nearly every other railroad company in the State of Tennessee.

And this defendant further saith, that under the acts of the Legislature of Tennessee providing for or authorizing the same, nearly all the holders of the State bonds which had been loaned to the railroad companies under the Internal Improvement Laws, and for the loan of which the State held the statutory liens, including the complainant and the previous holder or holders of the bonds which, by the bill, he now claims to own, have funded the interest coupons in arrear upon their said bonds prior to 1874, into new bonds of the State, surrendering and cancelling thereupon such coupons, and in such funding have received the new bonds for the old coupons, without any discrimination in respect to the different railroad companies to whom had been originally loaned the bonds to which had belonged such funded coupons, so that one of the new bonds would be for coupons upon bonds which had been loaned to several different railroad companies, without any separation or discrimination, and likewise coupons upon other

State bonds issued for other purposes of the State.

And this defendant further saith, that the record kept by the State officers of Tennessee of the number of the bonds which had been loaned to the different railroad companies under the Internal Improvement Laws, was not open to public inspection, and the holders of such State bonds never knew, nor inquired, nor sought to know, to what particular railroad company the bonds held by them respectively had been loaned or issued, until the published report made by the Comptroller of the State of Tennessee, in the year 1875, information was given to the public in certain schedules, of the particulars of the various classes of the State bonds, and the purposes for which they had respectively been issued, and the numbers borne by such bonds respectively.

And for answer to all the allegations of the bill, imputing to the railroad companies who made settlements with the State under the Acts of 1869 and 1870, or who took part in favoring that legislation, hesitation or doubt as to the alleged lien of the State bondholders upon the railroads, and the procuring and publication of legal opinions upon the subject, this defendant saith no such question was supposed to exist by the railroad companies or anyone else until in or about the year 1870, when some one started the idea of a right, on the part of State bondholders, by subrogation, to the liens held by the State, and procured and published a professional opinion in favor of the existence of such a right. Certain of the railroad companies, including this defendant, hearing that such a claim had been started, consulted counsel in Tennessee and in New York upon the subject, and all the counsel so consulted, without hesitation, gave the opinion that there was no legal basis whatever for the claim, and that the opinion which had been giv-

en in support of it proceeded upon mistaken views of the acts, and the misapplication of a principle of equity law, unquestionable in itself, but which could have no application to the case upon a correct understanding of the acts and of the points involved.

Nothing more was heard of the claim which had been started or rather suggested by the publication of the opinion asserting the existence of such a right on behalf of the State bondholder, no suit or legal demand of such a character was ever brought, and the idea of any such possible claim was supposed to be abandoned, and it died away and was not expected to be ever again heard of, and all parties proceeded upon the basis, which had always heretofore been regarded as unquestionable, that the statutory lien was the sole property of the State, for securing the company's indebtedness to it, and under the State's sole control, and releasable at its pleasure, and the State bondholders having nothing to do with it, and nothing more was heard of any such claim until some six or seven years afterwards, when in a certain litigation some one undertook to set up collaterly, that there was or might be such an outsanding claim upon a railroad on behalf of State bondholders, but still no such claim was put forward or asserted in any legal shape by any one claiming to be a State bondholder, until the time of the commencement of this suit as aforesaid.

And this defendant further saith that in the year 1871, the State of Tennessee, in pursuance of a statute directing the same, filed a bill in Chancery against several of the railroad companies upon whose roads it held such statutory lien and which were in default, seeking a decree for sale of the roads under such liens, for such default, and therein treating the lien as belonging to the State

exclusively, and as one in respect of which the State bondholders had no interest nor right of interference, but inasmuch as the possible existence of such a right or interest on the part of the State bondholders had been suggested, making them parties to the suit as parties unknown, to the end that they might assert their rights and interests, if any they had, and service of process in such suit was duly made upon such bondholders as parties unknown, by publication in accordance with the statute of Tennessee in such case provided, and the pendency of such suit and the opportunity and invitation for the State bondholders to come in and in such suit assert and enforce their rights, if any they had, were notorious and well known to the bondholders in general, and especially to the complainant, and to the then holders of the bonds, he now claims to own, yet none of them chose to come forward, or in any way assert or make any such claim, but they wholly failed to appear in such suit, and allowed a decree to pass in such suit upon their default, excluding them from any such interest and adjudicating in favor of the exclusive right and title of the State, and for sale thereunder of the roads for the exclusive benefit of the State, the price being payable in State bonds, which sales were accordingly made.

And this defendant saith, that under the various circumstances hereinbefore mentioned, there was for a long term of years, that is to say, for twenty years and upwards, a practical exposition and interpretation of the statute in question, with the concurrence of the State, the railroad companies and the State bondholders, to the effect that the statutory lien aforesaid belonged exclusively to the State, and that the State was entitled to control, manage, release and deal with the same, at its pleasure, and that the transaction between this de-

fendant and A. Iselin, Sr., and A. Iselin, Jr., and the State, on August 29th, 1877, whereby A. Iselin, Sr., and A. Iselin, Jr., paid the State for such statutory lien upon its property and received a transfer thereof, and by which this respondent executed new bonds and incurred new liabilities, was entered into by this defendant in reliance upon such practical exposition and interpretation, as well as upon the provisions of the statute itself; and this defendant insists that under such circumstances the complainant and the other State bondholders are now equitably estopped from setting up or claiming a contrary interpretation and construction of said statute, so as thereby to compel this defendant to pay the same debt twice over, if upon the statute itself, apart from such previous practical exposition and interpretation, there were grounds for the claims now made by the complainant, which this defendant, nevertheless, in nowise admits but utterly denies.

And this defendant, further answering, denies the allegations of the bill to the effect that none of the acts of the General Assembly therein referred to, purport to authorize the discharge of the lien of the Internal Improvement bonds issued to any railroad company in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The provisions of the Act of 1869, requiring railroad companies which had issued second mortgage bonds, availing themselves of the provisions of that Act to pay in bonds of the same series as those loaned to such company, had not by its terms any application to this defendant, and in respect of those companies to which such proviso was applicable, it did not at all require them to pay in the identical bonds which had been loaned to them, but merely to pay in bonds of the same series. The State had issued several different series

of bonds, distinguished respectively, by separate numbering, and in some cases by lettering as A, B, C, &c., and in certain instances by color, as "white" and "green," the difference between the series in point of practical importance being in the *dates of their maturities* respectively. There had been several separate series of bonds issued under the Internal Improvement Act of February 11, 1852, and its amendments, but there was no such thing as a separate series confined to bonds issued to one particular railroad company. Each series embraced bonds issued to many different railroad companies, and each railroad company received bonds of several series. And this defendant saith that the proviso of the Act of February 25, 1869, that the passage of the Act shall not affect the interest of the present bondholders of the State was probably inserted by way of amendment, to satisfy some idea of some member of the Legislature, and assented to or permitted as being unobjectionable and harmless, but it certainly cannot nullify the substantial provisions of the Act, otherwise fully operative or effectual, nor give to a State bondholder a right in respect of the State's lien which before he had not.

And for answer to the allegations of the bill relating to the latter clause of the third section of the Act of January 2, 1870, referring to bonds upon which the State is secondarily liable, this defendant saith that it clearly and obviously referred to those bonds, of which there was a considerable amount outstanding, upon which the State was liable as endorser and not as maker or obligor. And this defendant absolutely denies the allegation of the bill to the effect that the State of Tennessee was only secondarily liable for the bonds loaned by it to this defendant, and that the said company was primarily liable under the provisions of said act for the payment of the principal and interest of said bonds, and that the

said acts were by their terms inapplicable to the lien existing in respect of the bonds issued in aid of this defendant, and each and every part of said allegations; and, upon the contrary, this defendant saith that the State was liable, not merely primarily but solely, upon the outstanding bonds which it had loaned to the East Tennessee and Georgia Railroad Company.

And this defendant saith that the plainly declared object and purpose of said Act of January 2, 1870, was to authorize the assignment or discharge, by paying in State bonds therefor, as therein provided, of the indebtedness of the several railroad companies created under the Internal Improvement Acts aforesaid, and a full discharge or transfer of the statutory lien therefor; and that the construction claimed by the complainant would wholly prevent the settlement of any such debts or the transfer of any such liens, even by paying in the identical bonds which had been loaned to the company paying in the same, and render the entire act a dead letter and a mere absurdity.

And this defendant saith that in the settlement and discharge of the indebtedness of the respective railroad companies to the State for the bonds loaned to them under the Internal Improvement Act, and of the State's statutory liens therefor, under the Acts of 1869–'70, by making full payment thereof in State's bonds at par, without restricting such payments by such company to the particular bonds which had been loaned to it, there was no unfair or unjust advantage to the railroad companies, nor any wrong, injury or injustice, either legally or morally, to any of the State's bondholders; the value and market price of all the bonds was precisely alike, as before stated, and in so far as the bonds which had been loaned to a particular railroad company could be identified and found in the market for sale, it

would have cost no more to buy them than other bonds, but there was practically no such identification or separation, and to have made any such requirement would have caused almost endless trouble in carrying out practically the provisions of the act, and there was no reason whatever for making such requirement. No one then knowing to what particular railroad company particular bonds had been issued, it was a matter of mere accident how many of the bonds which had been issued to a particular company would be included in those purchased or acquired by it for the purpose of making the settlements under the act, and so each company paid in, naturally, some of the bonds which had been loaned to itself, and a much larger amount of bonds which had been loaned to some of the large number of other companies.

The holder of a State bond which happened to have been loaned to a solvent company, whose road afforded good security to the State of Tennessee for the company's indebtedness to it for such borrowed bond, if he had known, as he did not, to what company his bonds had been loaned, would have had no better pretension in equity or intrinsic justice than in law, to a preference over other creditors of the State in the administration of the State's assets, whether existing in the shape of mortgages upon its railroads or in any other shape, inasmuch as he not only had no lien in law upon any particular property, but he had trusted the State alone upon its general credit, having become merely a purchaser of a State bond pure and simple.

If the debts of the railroad companies of the State had not been settled or the lien therefor transferred, as was done under the Acts of 1869–'70, the State bondholder would have had no recourse against the railroad companies or their roads.

Large sums were then in arrear from the railroad

companies to the State, upon the annual payments which had become due and owing from them on account of principal, under the Sinking Fund provisions, which arrears, if such sales had not been made under the Acts of 1869–'70, would, as to such of the companies as were of sufficient solvency or strength for making such payments, have been collected and paid in reduction of the statutory liens *pro tanto*, and would have either been paid in State bonds, or if not so paid, would have been invested in State bonds, and before the maturity of the State bonds loaned to the particular company the regular further yearly payments of like character would have been as respects the company of sufficient solvency or strength as aforesaid made in like reduction of the lien *pro tanto*, and the amount thereof would have been invested in like manner in Tennessee State Bonds, so that before the State bonds loaned to the company matured, the company's indebtedness therefor would have been wholly discharged, and the statutory lien extinguished, and if the provisions of the acts antecedent to the Act of March 20th, 1860, had been followed the payments made therefor and their proceeds and accumulations would exist in the State Treasury, simply in Tennesseee State Bonds, without any restriction whatever in respect of the company to which such bonds might have been issued, if issued to any company, or as to the other purpose or purposes for which such bonds might have been issued, which, if the provisions of the Act of March 20th, 1860, had been followed, the Tennessee State Bonds purchased with such money paid in by the company on account of the capital of their indebtedness would all have been canceled, thus producing in either case the like eventual results as were produced under the Acts of 1869 and 1870, the operation of which acts was merely to

accelerate the payments, without changing their substantial character or effect.

And in respect of the interest which would have been periodically payable by the companies, upon such portion of their indebtedness to the State, as from time to time remained unpaid, which interest upon such portion was the maximum amount of interest which, after the Act of March 20th, 1860, the companies were liable to pay, such payments, if collected through the medium of a Receivership, would, in virtue of the express provisions of the fifth section of the original act, have gone into the State Treasury, where the same would have formed part of the general assets of the State, upon which the particular State bondholder would have had no lien, and over which he would have possessed no power or control, and if the sum thereof had been paid voluntarily by the company, the amount thereof would have gone into the State Treasury and formed part of the general assets of the State in like manner. And this defendant saith that when, in the year 1861, the Bank of Tennessee ceased to be the general fiscal agent of the State, and practically the State Treasury as theretofore, the State of Tennessee enacted a law of July 1st, 1861, which required the railroad companies to pay to the Treasurer of the State the amounts due and owing by them from time to time for interest upon the amounts of their indebtedness for the bonds loaned to them by the State, instead of paying such interest into the Bank of Tennessee, as had been theretofore required, which Act of 1861, or a similar act passed after the close of the war, continued in force until January 26th, 1869, or thereabouts, when another act was passed by said Legislature requiring such interest payments of the companies to be made to the Comptroller instead of the State Treasurer, which latter act thereafter remained in force.

And this defendant further saith that for a certain period the State of Tennessee gave indulgence to the companies in respect of certain of the payments on account of principal which were to be used and applied by the State by way of sinking fund, as aforesaid, and suspended for a time the obligations to make certain of such periodical payments; but, by an act passed November 23d, 1865, continuing such suspension to January 1st, 1867, they raised the amounts from thenceforward payable yearly by the companies on account of principal to be used by the State by way of sinking fund and to be credited on the debt and statutory lien, as aforesaid, to four per cent. per annum, to be paid to the State Treasurer in State bonds.

And this defendant, further answering, saith, that instead of the plaintiff being, as by the bill he represents, a *bona fide* holder of State bonds, secured to the holder thereof by a contract lien upon this defendant's railroad, and in reliance upon which he became such holder, and of there being an unjust attempt by the action of the State and of this defendant to deprive him of such lien, he is in fact a speculator, who having been advised by a lawyer or lawyers that there exists in law as appurtenant to certain Tennessee State bonds, a railroad lien of such character as he now asserts, although the bonds were negotiated, and from time to time resold, without the existence of any such lien being known, suspected, or imagined by any one, and without his having any idea thereof when he purchased or acquired his bonds, has been and is seeking, in alliance with certain confederates, to make a profitable and inequitable speculation, by setting up such lien in law and enforcing the same, to the extent and effect of compelling the railroad companies to pay the same debt twice over after they have once paid and settled it it full, in good faith

and without the least idea that such lien or such liability on their part existed; and in execution of such scheme, the complainant and certain confederates of his engaged in the like attempt—finding themselves the owners of certain Tennessee State bonds, which they had purchased or acquired as Tennessee State bonds, pure and simple, and without any idea of any collateral railroad lien, which bonds, upon investigation by the complainant and his confederates of the record kept by the State for its own purposes merely, appeared to have been loaned, some of them to solvent companies whose roads are of full value for the amount of the loan, and others to insolvent companies whose roads are of little value, and others of which had not been at all loaned to any railroad company under the Internal Improvement Act aforesaid, and all of which bonds were of like market values and all greatly depreciated, viz.: to the price of some forty per cent. or less of the face value, throwing in three years' back interest without any allowance of price therefor, which depreciation was consequent upon the low financial condition and credit of the State, have pursued the plan and method of changing off their said bonds, which had been loaned to the insolvent companies, or which had not been loaned to railroad companies at all, for such bonds loaned to the solvent companies having the valuable roads, and likewise to increase the extent of their speculation by buying more bonds at such low prices, confining themselves in such purchase to those issued to the solvent companies with valuable roads as aforesaid, and such end they have respectively pursued by various methods, partly by selling bonds bearing certain numbers which do not answer their purpose, and buying instead others which do, and partly by inducing other holders of Tennessee State bonds, to allow them respectively the privilege of

examining the numbers of the same, and to pick out such as they chose and take them in substitution for other Tennessee State bonds held by the complainant and his confederates, which do not answer their purpose, upon terms of paying to such other Tennessee State bondholders, allowing to them respectively such privilege of exchange, some small bonus of one per cent. or thereabouts for so doing.

And this defendant, further answering, saith that if, under the provisions of the said Act of February 11, 1852, the holders of the State bonds had any rights or interests in or to the statutory mortgage liens by said act reserved to the State (which this defendant wholly denies), all such rights and interests were conditional and subject to modification or abrogation, and to the operation and effect of whatever should thereafter be done by the State under and in virtue of the twelfth section of said Act of February 11, 1852. And this defendant alleges that the Legislative Acts of February 25th, 1869, and January 2d, 1870, in the bill mentioned, were enacted by the State of Tennessee in conformity with and pursuance of the power reserved to the State by the twelfth section of said Act of February 11, 1852; and that under said twelfth section the State was fully authorized to enact the same, and thereby to alter, deal with, and take away, according to the tenor and effect of said Acts of 1869–'70, and the things done in pursuance thereof, any and all previous rights and interests, if any there were, of such State bondholders. And this defendant alleges that the determination by the legislative power of Tennessee upon the question of the provisions of said Acts of 1869 and 1870 respectively being such as were deemed, or were necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of the act aforesaid

(a conclusion of the State upon which question in the affirmative thereof is in law deducible from the State's enactment of the statutes respectively), is, under and in virtue of the provisions of the twelfth section of said Act of February 11, 1852, conclusive upon the State bondholders, and certainly not enquirable into by this Court in this suit, upon the demand of the complainant that the Court should do so. But nevertheless, this defendant alleges, that if the same were so enquirable into by this Court, at the suit of the said complainant, the provisions of the said statutes of 1869 and 1870, were clearly within the rights and powers reserved to the State by the said twelfth section, and a reasonable and legitimate exercise by the State of such reserved rights and powers, and in this behalf this defendant, besides referring to all the several matters and things hereinbefore stated which are relevant to such question hereby states the further facts, that at the time of the passing of the said Acts of 1869 and 1870 respectively, and at the time of the said transfer of the lien for the bonds loaned to it, there were large arrears due and owing from this defendant to the State upon and for its annual payments by the laws aforesaid respectively required to be made by it, in reduction of the principal of such indebtedness and required to be credited thereon as aforesaid, and to be used by the State by way of sinking fund, as aforesaid, and in the payment whereof defaults had been made and continued and still existed, and before and at the time of the said enactments of 1869 and 1870, and thenceforth and until the said final settlement made with the State in July, 1877, the right and power existed in the State under the previously existing laws, and especially the statute of February 21, 1856, to have the railroad and all the property of this defendant covered by said statutory lien sold out under decree in Chancery, in enforce-

ment of such statutory lien, and because of subsisting default in respect of such overdue payments to the State, and to make such sale in such manner as completely to exhaust the lien, and vest in the purchasers at such sale a clear and unincumbered title to said railroad and all the other property covered by the lien, and to have the proceeds of such sale paid into the State Treasury, and there invested in Tennessee State Bonds, unrestricted as to kind or class; and that in respect of each and all of the railroad companies and railroads, and the statutory liens thereon, which were embraced in or covered by the provisions of the said Acts of 1869-70, there existed substantially the like situation and conditions, and the like liability of the roads and property covered by the lien, to sale for payments on account of principal already due and in arrear to the State, with like exhaustion of the lien, and vesting an unincumbered title in the purchasers, and like use and application of the proceeds of sale as aforesaid; and this defendant further saith that the State having in respect of several of the said roads, exercised its statutory remedy of appointing Receivers, the result was found to be that it gained or saved nothing thereby, for the roads in their then condition did not pay the costs of operating them.

And for answer to the allegations of the bill, to the effect that the acts therein referred to, subsequent to the issuance of said bonds, in so far as they attempt or may be construed to have authorized the statisfaction of the statutory lien alleged in the bill to have been established for the benefit of the holders of the Internal Improvement Bonds of Tennessee, loaned to the said company, by any other means than payment, impaired or sought to impair the obligation of the said alleged contract, and were in violation of the Federal Constitution and void, and that all acts committed thereunder are illegal

and null, this defendant denies such allegations, and each and every of them, and every part thereof.

And this defendant denies the allegations of the bill, to the effect that the complainant, by virtue of his alleged rights as a bondholder and the terms of the statutory mortgage above described, is entitled to have the possession of the Memphis & Charleston Railroad in the State of Tennessee, secured by a Receivership for the benefit of the holders of the Internal Improvement Bonds loaned to the said railroad company, and for the payment of the interest thereon, for which it is alleged the said company became bound, and each and every of such allegations, and every part thereof, and in respect to the allegation of the complaint, that the Receiver or Receivers so to be appointed should apply the revenues of the property to payment of the overdue interest on said bonds, this defendant, while utterly denying the right to any such Receivership, saith, that this demand of the complainant for the payment over and application by the Receiver or Receivers, in case of his or their appointment, of the net revenues of the property, in the manner sought by the bill, would be in direct and clear violation of what the complainant claims to have been an unalterable contract, it being clearly and positively provided by the original act that the Receiver or Receivers appointed thereunder shall pay the net revenues of the road realized by means of the Receivership into the Treasury of the State of Tennessee.

And for answer to the allegations of the bill, to the effect that the officials of the State of Tennessee, named in the Internal Improvement Act for the execution of the trusts pertaining to the statutory Receivership, to wit: the Comptroller and the Governor, claim to be bound by the subsequent acts of the General Assembly, passed in the years 1869 and

1870, and that the complainant is unable to obtain the action of the said officials, or of the State of Tennessee, for the execution of the trusts alleged by the complainant, this defendant denies each and every of such allegations, and leaves the complainant to make proof thereof, if such proof be competent or admissible, which this defendant denies.

And this defendant hereby takes the objection to the said bill that it does not allege the making of any application by or on behalf of the complainant to the Comptroller or the Governor of Tennessee to take proceedings for the appointment of the statutory Receiver or Receivers, as provided for by the fifth section of the said Act of February 11, 1852, nor any refusal on the part of either of them in that behalf, and it claims the like benefit of this objection as if taken by demurrer.

Moreover, this defendant saith, that there was never in fact any such application or refusal; that the persons who now are such Governor and Comptroller respectively, and who were so at the time of the filing of the bill, were not such officials at the time of the passing of the said Acts of 1869 and 1870, or either of them, or at the time of the doing of the things thereunder which this defendant alleges and the complainant denies, were legally operative to satisfy the indebtedness or transfer the lien as aforesaid; that if such action was legally inoperative and ineffectual, and therefore the debt and lien and right to Receivership still exists as the complainant claims, and if the complainant, as beneficiary of the alleged trust, is entitled to have the Governor appoint a Receiver, the legal presmption is that the Governor will perform his duty upon request, and in fact neither he nor the Comptroller has taken ground upon the subject, nor is either of them called upon to do so before being requested, and in the absence of such request and refusal,

there is no legal presumption that they will refuse, if legally they ought to act, and this defendant craves the benefit of this objection as fully as if it were taken by demurrer, plea, or otherwise.

Nevertheless, this defendant claims that if there were such demand and refusal, and if in law there still exists a legal statutory lien upon the said road, and if the right of the State, through its Governor, to appoint a Receiver still subsists, and if the complainant, as one of the beneficiaries of a trust, whereof the State of Tennessee is the Trustee, has an interest in the execution of the trust, and if the said State, through its Governor, omits or refuses to do such acts in the execution of the trust as the complainant demands or requests, all these circumstances cannot, as this defendant insists, give to this Court a right, at the suit of the complainant, to take the trust or its execution, or the trust property or its income or any part thereof, out of the hands or control of the Sovereign State of Tennessee, or to execute such trust itself in place of and in defiance of the State and its chief executive officer, and more especially so, in a manner and with results not in conformity with, but in direct violation of the terms of the trust, as the complainant by his bill now demands, as is hereinbefore specifically shown.

And this defendant further saith, inasmuch as the statutory mortgage lien in which the complainant claims an interest was vested and held by a Sovereign State of the United States, as the sole mortgagee, and said State sold and transferred the same upon and for full and valuable consideration paid to said State, therefor in good faith and in full reliance of the State's power and right to give such release and discharge, and as the only title or interest claimed by the complainant is as beneficiary of an alleged trust, whereon he claims the State

held such mortgage lien in trust for himself and others, and his claim is based upon allegations of breach of trust or fraud, or both, on the part of the State, in giving such release and discharge, and receiving such consideration therefor, this defendant insists that no such breach of trust or fraud can be in law imputed to such Sovereign State, nor can its transfer be impeached by the complainant in this Court upon any such ground, nor can this Court enquire into such alleged breach of trust or fraud upon the part of such Sovereign State, nor by its decree annul its transfer on such ground.

And this defendant, further answering, saith that if the complainant be right in the legal position he assumes, that the transaction by which the said Iselins paid in Tennessee State bonds in purchase of the debt and lien, as aforesaid, was null and void and ineffectual, the necessary result of a legal adjudication to that effect, if such adjudication can be so made as to be conclusive in law and practically operative, must be, to leave the State liable to repay the consideration received by it for such abortive and attempted but inoperative sale and transfer, and in all other respects to leave the rights of all parties, in respect of the said statutory mortgage lien, in the same position as if the ineffectual attempt to sell and transfer the same had not been made, so that the original statutory lien, with all its incidents, still subsists in accordance with the original statutes, and such amendments thereof, if any there be, affecting the same, as may have been legally valid and operative; and the legal and equitable remedies permissible for the enforcement thereof, embracing the proceedings for Receivership thereunder, must be such and such only as are prescribed in that behalf by the original statute, and such operative amendment or amendments, if any; and if such statutory mortgage lien still subsists, as the com-

plainant claims, it is a mortgage held by the State of Tennessee as sole mortgagee; if the complainant be a beneficiary of the trust, as he claims to be, the State of Tennessee, besides being sole trustee, and as such exclusively vested with, and holding and possessing the trust estate, is likewise a beneficiary of the trust, and as the State is liable absolutely for the whole debt which the lien secures, such interest of the State as a beneficiary of the trust is equal in amount to the whole extent of the lien, and as such beneficiary, the State's interest in the management of the trust property, and in the modes and methods of such management, extends to the whole amount of the lien, and by the terms of the trust, the power of such management and the control of such modes and methods is vested in the State, through its absolute power to appoint and control, through its Governor, the manager, and the Court cannot divest it of nor interfere with such its beneficial rights and powers; and even if the State, were a mere Trustee, without such beneficial interest, this Court could not, at the suit of a citizen of another State, either in form or in effect, remove the State from the Trusteeship, nor take the trust or the trust property or its income or any part thereof, out of the hands or control of the State. Any such action of this Court towards the State would be beyond its jurisdiction or power.

For all the several reasons above stated and others to appear in argument, this defendant insists that the State of Tennessee is an indispensable party without whose presence as party in the cause, the complainant cannot and could not, in any event, have or be entitled to the relief or decree sought by his bill or any part thereof, nor any relief or decree against this defendant upon or in respect of the matters in the bill alleged, and this defendant hereby takes the objection that the State of Tennessee

is such indispensable party, and prays the benefit thereof, not only as an objection taken by answer, but likewise and with like effect, as if taken by plea or demurrer, or otherwise howsoever.

And if, as this defendant admits to be the case, the Constitution of the United States prohibits the complainant from suing the State of Tennessee as a defendant in this Court and prohibits this Court from taking jurisdiction of any such suit, this defendant submits, inasmuch as the State of Tenessee is an indispensable party as aforesaid, to a legal determination or adjudication upon the matters in controversy, or sought to be drawn into controversy in the cause, or any of the same; that thereby the jurisdiction of the Court over the suit and over the matters in controversy or sought to be drawn in controversy therein fails, and is or must be ousted, upon and because of failure or inability to bring in the State of Tennessee as a party, and they pray the benefit of this objection not only as by answer, but as if taken by plea, demurrer or otherwise soever.

And this defendant submits, that assuming that the State of Tennessee would be an indispensable party if suable, its non-suability cannot give the Court jurisdiction to proceed in the suit without its presence, and especially cannot authorize the court to take out of the hands or control of the State, without having it a party before the Court, the said statutory mortgage lien vested in and possessed solely by it, nor the management thereof, nor the mortgaged property or its income, nor any part thereof, nor the State's right of entry under the mortgage, through a Receiver as its bailiff, nor the statutory right to Receivership and the appointment of Receivers, and to receive into its treasury the net revenues or proceeds of the Receivership, nor in anywise to divest or interfere with the State's execution of the alleged

trust nor the trusteeship or trust estate or its income, nor any of the rights or interests which are legally vested in the State, nor to give to the complainant any other relief in respect of the case made or attempted to be made, by the bill; in respect of all which the State of Tennessee has such interest as to make it an indispensable party to any legal or binding adjudication or action.

And this defendant denies everything in the bill contained not hereinbefore specifically answered, and prays to be hence dismissed, with its reasonable cost and charges in this behalf sustained.

HUMES & POSTON,
J. B. HEISKELL,
C. F. SOUTHMAYD,
Solicitors and of Counsel for Defendant.

Schedule A.

We, James D. Porter, Governor of the State of Tennessee, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, have this day filed with the Treasurer of the State of Tennessee the written consent of the Board of Directors of the Memphis & Charleston Railroad Company, and likewise the written assent and approbation of the said The Memphis & Charleston Railroad Company, under the corporate seal of the said railroad company, that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., may, under and in pursuance of the sixth and seventh sections of the act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debts contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the acts of such Legislature in amendment thereof or supplementary thereto, pay, so far as the State of Tennessee is concerned, in bonds of the State of Tennessee, or coupons of such bonds, at par, as by law of the State of Tennessee is authorized, the amount of the indebtedness hereinafter mentioned of the said Memphis & Charleston Railroad Company to the State of Tennessee; and that said Adrian Iselin and Adrian Iselin, Junior, composing the firm aforesaid, shall thereby and thereupon, as provided by the sixth section of said Act, be substituted and entitled to all the liens against said company for the payment of said debt that the State of Tennessee had or has by law, and shall thereby and thereupon, as provided by the seventh section of said Act, be entitled to have and hold all the lien or liens which the State of Tennes-

see had or has upon said railroad, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being thereby declared to be to place the said Adrian Iselin, Junior, so paying, with the consent of the said railroad company, in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

And we do further certify that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have thereupon, with the consent and approbation of the said railroad company, and of the Board of Directors thereof, and under and in pursuance of and in accordance with the said sixth and seventh sections of the aforesaid Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other laws of the State of Tennessee, in that behalf paid to the State of Tennessee, in the bonds of said State, and coupons of such bonds, at par, as allowed by law, the amount of indebtedness of the said Memphis & Charleston Railroad Company to the State of Tennesse, and for which the State of Tennesse holds a lien by law upon the said company's railroad in the State of Tennessee and other property, which indebtedness is for or in respect of the amount of the bonds of the State of Tennessee, which under the general improvement law passed the eleventh day of February, eighteen hundred and fifty-two, and the other Acts of the Legislature of said State, were originally loaned, issued, or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said railroad company failed to provide, the aggregate amount of the principal of

such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July instant upon the before mentioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents, making the whole amount of such indebtedness of said Railroad Company to the State of Tennessee, and for which the State holds a lien, as aforesaid, the aggregate sum of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, exclusive of interest accrued since the first day of July instant, which aggregate sum or amount, together with the interest accrued thereon since the first day of July, instant, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have this day, in the manner and under the circumstances aforesaid, paid to the State of Tennessee, in Tennessee State bonds and coupons at par, as allowed by the laws of said State; and we do further certify and declare that thereupon, and under and in pursuance of the sixth and seventh sections of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other Acts of the Legislature of the State of Tennessee in that behalf, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have become and are the purchasers and assignees of the above mentioned indebtedness of the Memphis & Charleston Railroad Company to the State of Tennessee, with all the liens held by the said State therefor, and with all rights in that behalf accorded or authorized by the

said sixth and seventh sections respectively of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the same are declared to be and are hereby assigned and transferred to them accordingly; and under and in accordance with the sixth section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that the said Adrian Iselin and Adrian Iselin, Junior, are substituted and entitled to all the liens against said railroad company for the payment of said indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said Act of the twenty-fifty day of February, eighteen hundred and sixty-nine, it is hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said Memphis & Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had; the object and intent being, and being hereby declared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

In witness whereof we have hereunto set our hands and official seals this twenty-fifth day of July, eighteen hundred and seventy-seven.

(Signed) JAS. D. PORTER,
Governor of Tennessee.

Seal of State of Tennessee.

CHAS. N. GIBBS,
Secretary of State.

such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July instant upon the before mentioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents, making the whole amount of such indebtedness of said Railroad Company to the State of Tennessee, and for which the State holds a lien, as aforesaid, the aggregate sum of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, exclusive of interest accrued since the first day of July instant, which aggregate sum or amount, together with the interest accrued thereon since the first day of July, instant, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have this day, in the manner and under the circumstances aforesaid, paid to the State of Tennessee, in Tennessee State bonds and coupons at par, as allowed by the laws of said State; and we do further certify and declare that thereupon, and under and in pursuance of the sixth and seventh sections of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other Acts of the Legislature of the State of Tennessee in that behalf, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have become and are the purchasers and assignees of the above mentioned indebtedness of the Memphis & Charleston Railroad Company to the State of Tennessee, with all the liens held by the said State therefor, and with all rights in that behalf accorded or authorized by the

said sixth and seventh sections respectively of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the same are declared to be and are hereby assigned and transferred to them accordingly; and under and in accordance with the sixth section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that the said Adrian Iselin and Adrian Iselin, Junior, are substituted and entitled to all the liens against said railroad company for the payment of said indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said Act of the twenty-fifty day of February, eighteen hundred and sixty-nine, it is hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said Memphis & Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had; the object and intent being, and being hereby declared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

In witness whereof we have hereunto set our hands and official seals this twenty-fifth day of July, eighteen hundred and seventy-seven.

(Signed) JAS. D. PORTER,
Governor of Tennessee.

Seal of State of Tennessee.

CHAS. N. GIBBS,
Secretary of State.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company,

2

versus

THE MEMPHIS and CHARLESTON RAILROAD COMPANY and THE EAST TENNESSEE, VIRGINIA and GEORGIA RAILROAD COMPANY.

3

The repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant; without

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5 this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct; and humbly prays as in and by his said bill he hath already prayed.

E. L. ANDREWS,
Solicitor for Complainant.

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UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT—WESTERN DISTRICT OF TENNESSEE.

(*In Equity.*) 1

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY and PETER GEDDES, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company,

vs. 2

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee.

The Petition of EUGENE KELLY, JOHN T. TERRY and PETER GEDDES respectfully shows to your Honors: 3

That your petitioners are owners and holders of Internal Improvement Bonds issued on account of the Memphis and Charleston Railroad Company, for the construction and equipment of its said road.

Your petitioners' said bonds are identified and numbered according to the description in the bill, in this suit, and have the like number of overdue and unpaid coupons attached thereto. The sched- 4

5 ule hereto attached and prayed to be taken as a part of this petition exhibits their ownership and holdings of said bonds.

Your petitioners likewise constitute a majority of the Committee of Tennessee Bondholders representing (36) thirty-six owners and holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company owning and holding (45) forty-five bonds issued to said company by the State of Tennessee.

6 Your petitioners desire to unite in the prosecution of the *Bill* herein, and to be joined as co-complainants according to the frame of the suit and the course and practice of this Court, with leave to amend the title and formal allegations of the Bill to conform to this petition. A copy of said amendments is hereto attached.

And your petitioners accordingly pray for the foregoing relief, and such other order as may be appropriate in the premises.

7 EDWARD L. ANDREWS,
Solicitor and of Counsel for Petitioners.

UNITED STATES OF AMERICA, }
Southern District of New York. } ss:

On this nineteenth day of August, A. D. 1879, before me personally appeared EUGENE KELLY, JOHN T. TERRY, and PETER GEDDES, who being duly and severally sworn, says each for himself,
8 that the matters and things stated in the foregoing petition are true so far as the same are stated of his own knowledge, and so far as stated on information and belief, he believes them to be true.

[L.S.] WILLIAM H. DELANCEY.
Notary Public, Westchester County, acting in New York County, under and by virtue of the Laws of 1873, of the State of New York.

UNITED STATES CIRCUIT COURT, 9

SIXTH JUDICIAL CIRCUIT—WESTERN DISTRICT OF TENNESSEE.

(*In Equity.*)

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY, and PETER GEDDES, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company, 10

vs.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY *et al.*

11

On the foregoing verified petition, and on motion of EDWARD L. ANDREWS, solicitor for complainants.

It is ordered, That EUGENE KELLY, JOHN T. TERRY and PETER GEDDES, be and the same are hereby admitted as co-complainants in this suit, and the formal amendments attached to the said petition are hereby allowed.

Dated Aug. 20, 1879.

W. STRONG, *J.*

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13 I, B. W. ETHERIDGE, Clerk of the United States Circuit Court, for the Western District of Tennessee, do hereby certify that the foregoing is a true and complete copy of the original petition and order as the same appears of record, and on the files in said Court.

Witness my signature and seal of said Court, this 4th day of Novemberr, 1879.

14 [L.S.] BELL W. ETHERIDGE,
Clk.
H. E. ANDREW,
D. C.

15

16

American Bank Note Co., 53 Broadway, N. Y.

United States Circuit Court,

Sixth Judicial Circuit, Western District of Tennessee.

IN EQUITY.

Calvin Armory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston Railroad Company,

versus

The Memphis and Charleston Railroad Company.

AMENDED BILL FOR RELIEF.

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

United States Circuit Court,

Sixth Judical Circuit, Western District of Tennessee.

IN EQUITY.

To the Honorable, the Judge of the Circuit Court of the United States for the Sixth Judicial Circuit and Western District of Tennessee.

Your orators, Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, who are citizens of the State of New York, bring this, their bill of complaint, against the Memphis and Charleston Railroad Company, and the East Tennessee, Virginia and Georgia Railroad Company, which are citizens of the State of Tennessee, and corporations organized, existing, and transacting business in said State by virtue of, and under, acts of the General Assembly of said State.

And thereupon your orators complaining, show unto your Honors that they bring this bill of complaint, as well on behalf of all other holders of the Internal Improvement bonds issued by the State of Tennessee to the Memphis and Charleston Railroad Company, who may come in and contribute to the expenses of the litigation, as on their own behalf as holders of said bonds.

Your orators show that the Memphis and Charleston Railroad Company is a body, politic and corporate, chartered by acts of the General Assembly of the State of Tennessee, passed February 2, 1846. The object and purpose of the creation of said corporation, by the said sev-

eral charters, was the construction, completion, and, thereafter the operation and management of a line of railway for the transportation of passengers and freight from the city of Memphis, in the State of Tennessee, through the territory of the State of Tennessee, to a point in the easternmost part of said State.

For this purpose powers were granted to said corporation, as are declared in the several charters and acts of incorporation. The said corporation was authorized to borrow money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for, and insure the payment of, its liabilities.

On or about the second day of June, the Memphis and Charleston Railroad was leased to the defendant, the East Tennessee, Virginia and Georgia Railroad Company, for the period of twenty years. The said last named company now possesses and operates the Memphis and Charleston Railroad, under the said lease.

Your orators make part of this, their bill of complaint, the said several charters and acts, with their several amendments, passed by the legislature of Tennessee, and attaches copies thereof, marked Exhibit A.

Your orators show that the General Assembly of the State of Tennessee, by an act, passed the 11th of February, in the year 1852, determined to lend to the railroad companies within its limits, and specified in said act, the aid of its credit, for the completion of their several lines of railway.

The plan of that legislation was that each railroad company should procure a certain amount of *bona fide* subscriptions for its capital stock, and that it should have graded, bridged, and ready for the reception of rails, a certain number of miles of its road. By means of these preliminary requirements, assurance was obtained that each railroad company would be competent to fulfill the obligations it was to incur under the statute hereinafter set forth. The period of four years was allowed for the completion of each section of a road. The act proceeds to authorize

and give validity to the bonds of State, which the Governor was required to issue to each company. The amounts of the bonds were to be ascertained by the length of each railroad within the State, and the proceeds of the bonds were to be exclusively applied to the payment of the railroad iron, and equipments of the road to which they were loaned. The President of each railroad company, assisted by a commissioner appointed by the Governor, was to negotiate the sale of the bonds loaned to his company. The act was made a public law for all purposes of notice, and a system of numbering was adopted for distinguishing each bond, and identifying the company to which it was issued. The tenor of the act which gave existence to the bonds was, that each company become liable upon, and bound to perform the obligations contained in, and represented by, the bonds loaned to it. Each company was to pay, from its own means, the interest upon the bonds loaned to it, as the same matured from time to time, and also to pay and discharge the principal debt, as it was expressed upon said bonds, when the same matured.

Your orators show that the sale of the said bonds was to be the means of raising the money requisite for completing the superstructure, laying the rails, and providing the equipment of the roads. The bonds loaned to each company were to be payable in such places in the United States as its President might designate. In order to insure the said sale, and make a market for said bonds, and to create confidence in the public, and on the part of persons to whom said bonds might be offered for sale, and who might become the purchasers of the same, that each company would punctually pay the principal and interest of the bonds loaned to it, or, in case of its failure, that ample security should be provided therefor, which might be easily realized, it was provided by the statute, that "so soon as the bonds of the State shall have been issued for the first section of the road, they shall constitute a lien upon said section, without a deed from the company," and the "State

of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage, without a deed from the company for the payment by said company of said bonds, with the interest thereon, as the same becomes due, and with a like mortgage or lien, without a deed from the company, upon the additional sections, and upon the entire road, including the stock, for the payment of all of the bonds issued to the company, and for the interest accruing thereon." This statutory lien was to be operative at once, and without conveyance or assurance of any kind from the corporations, and was to be superior to all other liens, upon the entire road and property of any corporation so receiving such public assistance, in the State of Tennessee. The statute was to be a substitute for a mortgage executed by each railroad company, for the purposes named in the act.

By the terms of an act of the same session provision was made for a public and official record of the issues of bonds to the several roads.

The Comptrollor of the State was required to sign and number the coupons of the bonds issued to each railroad, and the Secretary of State was required to number and countersign the bonds; and upon delivering bonds to the several companies, the Secretary of State was required to take a receipt, reciting the number, date, and amount of the bonds so delivered. These receipts were to be taken in a well-bound book, to be deposited in the office of the Secretary of State.

The General Improvement law, above referred to, is herewith set out fully and at length, to wit:

AN ACT to Establish a System of Internal Improvements in this State.

SECTION I. *Be it enacted by the General Assembly of the State of Tennessee*, That whenever the East Tennessee and Virginia Railroad Company shall have procured bona fide subscriptions for the capital stock in said company to an amount sufficient to

grade, bridge, and prepare for the iron rails the whole extent of the main trunk line proposed to be constructed by said company, and it shall be shown by said company to the Governor of the State that said subscriptions are good and solvent, and whenever said company shall have graded, bridged, and shall have ready to put down the necessary timbers for the reception of rails, and fully prepared a section of thirty miles of said road at either terminus, in a good and substantial manner, with good materials, for putting on the iron rails and equipments, and the Governor shall be notified of these facts, and that section, or any part thereof, is not subject to any lien whatever, other than those created in favor of the State by the acts of 1851-2, by the written affidavit of the Chief Engineers and President of said company, together with the written affidavit of a competent engineer by him appointed, at the cost of the company, to examine said section, then said Governor shall issue to said company coupon bonds of the State of Tennessee, to an amount not exceeding eight thousand dollars per mile on said section, and on no other condition, which bonds shall be payable at such place in the United States as the President of the Company may designate, bearing an interest of six per centum per annum, payable semi-annually, and not having more than forty nor less than thirty years to mature.

Sec. 2. Be it enacted, That the bonds before specified shall not be used by said company for any other purpose than for procuring the iron rails, chairs, spikes, and equipments for said section of said road, and for putting down said iron rails, and the Governor shall not issue the same unless upon the affidavit of said President, and a resolution of a majority of the Board of Directors, for the time being, that said bonds shall not be used for any other purpose than for procuring the said iron rails, chairs, spikes, and equipments for said section, and for putting down said iron rails, and the Governor shall have power to appoint a commissioner to act under oath, in conjunction with said President, in negotiating said bonds for the purposes aforesaid, and to act in any other matters pertaining to said company, where

the interest of the State, in the opinion of the Governor may require it.

SEC. 3. Be it enacted, That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes, and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due.

SEC. 4. Be it enacted, That when said company shall have prepared as aforesaid a second section, or any additional number of sections, of twenty miles each of said road, connecting with a section already completed for the iron rails, chairs, spikes, and equipments, as provided in the first section of this act, and the Governor shall be notified of the facts as before provided, he shall, in like manner, issue to said company like bonds of the State of Tennessee, to an equal amount with that before issued under the first section of the said act for each and every section, of twenty miles of said road so prepared as aforesaid, but upon the terms and conditions hereinbefore provided, and upon the issuance of the said bonds, the State of Tennessee shall be invested with a like mortgage or lien without a deed from said company, upon said stock, and upon said first and additional seetion or sections of said road so prepared, upon the rails and equipments put, or to be put, upon the same, for the payment of said bonds and the accruing interest thereon. Provided, that if the last section of said road shall be less than twenty miles, or if the railroad proposed to be constructed by any company hereinafter specified, shall be less than thirty miles in extent, bonds of the State shall be issued for such section, or such railroad, as may be less than thirty miles in extent, for an amount in proportion to the distance, as provided in this act, but upon the same

terms and conditions in all respects, as required in regard to the bonds to be issued for the other sections of said road. And when the whole of said road shall be completed the State of Tennessee shall be invested with a lien, without a deed from the company, upon the entire road, including the stock, right of way, grading, bridging, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business; and all depots, and depot stations, for the payment of all of said bonds issued to the company as provided in this act, and for the interest accruing on said bonds. And after the Governor shall have issued bonds for the first section of the road, it shall not be lawful for the said company to give, create, or convey to any person or persons, or body corporate whatever, any lien, incumbrance, or mortgage of any kind which shall have priority over, or come in conflict with, the lien of the State herein secured; and any such lien, incumbrance, or mortgage shall be null and void as against said lien or mortgage of the State, which shall have priority over all other claims existing or to exist against said company.

Sec. 5. Be it enacted, That it shall be the duty of said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due from time to time, upon said bonds issued as aforesaid, an amount sufficient to pay such interest, including exchange or necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that effect to the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all the assets thereof, and manage the same and receive the rents, issues, profits, and dividends thereof, whose duty it shall be to give bond and security to the State of Tennessee, in such penalty as the Governor may require, for the faithful discharge of his or their duty as receiver or receivers, to receive

said rents, issues, profits, and dividends, and pay over the same, under the direction of the Governor, toward the liquidation of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the person so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of the counties through which the road shall run, commanding them to take possession of said road, fixtures, and equipments, and everything pertaining thereto, and place the said receiver in full and complete possession of the same, and said receiver so appointed shall continue in the possession of said road, fixtures and equipments, and run the same, and manage the entire road, until a sufficient sum shall be realized, exclusive of the costs and expenses, incident to said proceedings, to pay off and discharge the interest as aforesaid, due on said bonds, which being done, the receiver shall surrender said road and fixtures and equipments to said company. The comptroller shall from time to time settle the accounts with the receiver, and the balance shall be deposited in the treasury of the State. The comptroller is authorized, and it is made his duty, upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds, as may not be provided for by the company, as provided for in this act, and the comptroller shall report thereof to the general assembly from time to time.

SEC. 6 Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney-General of the district in which is situated the place of business of said company of the fact; and thereupon, said Attorney-General shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, to receive the payment of said bonds, with the interest thereon and to indemnify the State of Tennessee, against any loss on account of the issuance of

said bonds, by ordering the said railroad to be placed in the hands of a receiver; ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 7. Be it enacted, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company; and bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be directed as aforesaid, and canceled. And should said company fail to comply with the provisions of this section, it shall be proceeded against, as provided in the 5th section of this act.

SEC. 8. Be it enacted, That the President of the company shall make semi-annual reports, under oath, to the Governor, until the completion of said road, setting forth fully the condition of the road and the company, and after its completion he shall report to the Governor annually, showing the financial condition of the company, giving a statement of the trade and travel upon the road, the receipts and expenditures, net earnings and dividends, and what per cent. is paid on the stock to the stockholders. And said reports shall be consolidated every two years by the President of said company, and said consolidated reports shall be laid before the Governor by the first of September, every two years after the completion of the road, and the Governor shall lay said report before the Legislature for its action, at the next meeting thereof, after said report is made.

SEC. 9. Be it enacted, That it shall not be lawful for any officer of said company to engage in any speculation or dealing, directly or indirectly, in any real estate on or along the line, at any of the depots or depot stations, or at either terminus of said road, until after the road is completed, and every officer of the company, before entering upon the duties of his office shall take an oath in writing, before any judge or justice of the peace in this State, that he will not knowingly violate the provisions of this act, and that he will faithfully perform the duties of his office; and if any such officer of the company, or other person taking an oath as herein provided, knowingly swears falsely, he shall be deemed guilty of perjury, and subject to all the pains and penalties thereof, and every affidavit required under this act may be sworn to before any judge or justice of the peace in this State.

SEC. 10. Be it enacted, That the provisions of this act shall extend to and embrace the Chattanooga, Harrison, Georgetown and Charlestown Railroad Company, the Nashville and Northwestern Railroad Company, the Louisville and Nashville Railroad Company, the Southwestern Railroad, the McMinnville and Manchester Railroad Company, the Memphis and Charleston Railroad Company, the Nashville and Southern Railroad Company, the Mobile and Ohio Railroad Company, the Nashville and Memphis Railroad Company, the Nashville and Cincinnati Railroad Company, the East Tennessee and Georgia Railroad Company, the Memphis, Clarksville and Louisville Railroad Company, and the Winchester and Alabama Railroad Company, so far as the main trunk roads to be constructed by said companies lie within the limits of this State, and not otherwise, and said companies shall have all the powers and privileges and be subject to all the restrictions and liabilities contained in this act.

SEC. 11. Be it enacted, That the gauge of all of said railroads (unless connecting with roads in other States of a different gauge) shall be the same as that of the Nashville and Chattanooga Railroad, and not otherwise, and the iron rails to be put upon said road shall not be less than eighty tons to the mile, if

the U rail is used, and not less than one hundred tons to the mile if the T rail is used.

SEC. 12. Be it enacted, That the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act. But in such manner as not to impair the vested rights of the stockholders of the companies.

SEC. 13. Be it enacted, That it shall be the duty of the Governor, from time to time, when there shall be reliable information given to him that any railroad company shall have fraudulently obtained the issuance of bonds of this State, or shall have obtained any of said bonds contrary to the provisions of this act, he shall notify the Attorney-General of this State, whose duty it shall be forthwith to institute, in the name of the State, a suit in the Circuit or Chancery Court of the county of the place of business of the company, setting forth the facts; and when the fact shall satisfactorily appear to the Court, that any of said bonds shall have been fraudulently obtained, or obtained contrary to the true intent, meaning, and provisions of this act, then, and in such case, the Court shall order, adjudge, and decree, that said road lying in the State, with all the property and assets of said company, or a sufficiency thereof, shall be sold, and the proceeds shall be paid into the treasury, and it shall be the duty of the comptroller immediately to vest the same in stocks, creating a sinking fund, as provided for in the 7th section of this act; and said company shall forfeit all rights and privileges under the provisions of this act, and the stockholders thereof shall be individually liable for the payment of the bonds so fraudulently obtained by such company, and for all other losses that may fall upon the State in consequence of the commission of any other fraud by such company, excepting such stockholders as may show to the said Court that they were ignorant of or opposed to the perpetration of such frauds by the company.

SEC. 14. Be it enacted, That in the event any of the roads, fixtures, or property belonging to any of

said roads shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property, in the name of the State; and in case said agent shall purchase said road for the State, the Governor shall appoint a receiver, who shall take possession of said road and property, and use the same as provided for in the 5th section of this act, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

SEC. 15. Be it enacted, That this act shall be deemed and taken to be a public act as to all purposes of notice: Provided, That should any of the companies hereinbefore enumerated have, bona fide, and before the passage of this act, purchased or otherwise contracted for, upon their own credit, the necessary iron, rails, spikes, equipments for the road or roads, or any section or sections thereof, the bonds of the State shall be issued to such company or companies, as hereinbefore prescribed.

SEC. 16. Be it enacted, That the railroad companies specified in this act, and all other railroad companies hereafter incorporated in this State, shall have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other, or with the branches thereof; and it shall be the duty of said companies, when required, to receive on their roads and branches, the full loaded freight cars from each other and the branches thereof, and transport the same to their destination, and return them, without charging for the transportation of the wares, goods, merchandise, and produce therein, any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars. Provided, that said companies shall not be compelled to receive such cars on their roads, unless they are constructed with the same gauge, and are of equal strength with their own cars, of which the principal engineer of the road of which it is proposed to require said cars to be transported shall be the judge. Provided, that

the bonds of the State, proposed to be issued to the Memphis and Charleston Railroad Company under the provisions of this act, shall, in the event of their issuance to said company, be divided between the main trunk line, proposed to be constructed by said company, and the branch thereof, from the town of Moscow to the town of Sommerville, in the county of Fayette, according to the respective lengths of said main trunk line and said branch; and the lien of the State, as herein secured, shall continue upon said main line, and also upon said branch, until said bonds and interest are paid, as heretofore provided.

SEC. 17. Be it enacted, That in all cases where bonds may be issued to any of said companies, as provided in this act, the State of Tennessee shall be entitled to two directors in each company, to be appointed by the Governor of the State, to which bonds may be issued.

SEC. 18. Be it enacted, That when the Nashville and Chattanooga Railroad Company shall have completed twenty-five miles of their road, in addition to the eighty miles specified in the second section of the act, passed the 4th of February, 1848, chapter 169, then the Governor of the State shall indorse and guarantee, in the name and on behalf of the State of Tennessee, the bonds of said company to the amount of one hundred and seventy-five thousand dollars, and in like manner, when another section of twenty-five miles of said road shall have been completed, the Governor of the State, in the name and on behalf of the State, shall indorse and guarantee the bonds of said company to the additional amount of one hundred and seventy-five thousand dollars, and said bonds are to be indorsed and guaranteed in the same manner, and the same indemnity is to be furnished by said company for the protection of the State, and the like lien is to be given, and the same character of bonds are to be indorsed and guaranteed, as provided in the said act of the 4th of February, 1848.

SEC. 19. Be it enacted, That the aid contemplated by the first section of this act, shall only be extended to one of the roads chartered under the names of the Nashville and Southern Railroad Company,

and the Tennessee and Alabama Railroad Company. *Provided*, That the first of said roads which shall secure the subscription of the capital stock, for the construction of the same, shall be entitled to such aid. *Provided further*, If the Nashville and Southern Railroad Company first obtained the stock in their railroad, as provided in the first section of this act, and shall construct their road to the Tennessee river, to the Mississippi State line, or to a point between the Tennessee river and the Mississippi State line, then the Tennessee and Alabama Railroad Company may construct their road from the Alabama State line to intersect with the Nashville and Southern Railroad, at such point as said company may select, and the provisions of this act shall extend to the Tennessee and Alabama Railroad, from said Alabama State line to said point of intersection. But if the Tennessee and Alabama Railroad Company first obtain the stock in their railroad, as provided in the first section of this act, and construct their road to the Alabama line, in the direction of Florence, then the Nashville and Southern Railroad Company may construct their railroad from the Tennessee river, the Mississippi State line, or any point between the Tennessee river and the Mississippi State line, so as to intersect the Tennessee and Alabama Railroad, at such point as the Company may select, and the provisions of this act shall extend to said railroad from said point of intersection to the Tennessee river, the Mississippi State line, or to any point between the Tennessee river, and the Mississippi State line. And the Nashville and Southern Railroad Company, and the Tennessee and Alabama Railroad Company, shall have power to unite or consolidate their stock if they deem it advisable, and upon such terms as the companies may agree upon. *Provided also*, that if the Memphis and Nashville Railroad Company shall not comply with the requirements of this act, and complete thirty miles of their road within four years; or if the Nashville and Northwestern Railroad Company shall, in like manner, fail to complete thirty miles of their road within four years, then the Tennessee Central Railroad Company shall have all the rights, powers, privileges, and benefits in-

tended to be given by this act, to those companies respectively, under the same restrictions and limitations; but the said Tennessee Central Railroad Company shall be allowed two years longer time, in which to prepare thirty miles of their road-bed for the reception of the iron rails, and may then receive the aid of the State, in the issuance of bonds for their benefit, as prescribed in this act. *Provided*, That this provision shall not preclude any subsequent legislature from extending the time of four years in which to complete any section of thirty miles of said Nashville and Memphis, or Nashville and Northwestern Railroad. That each of said companies is hereby authorized and required to appoint an agent or agents to whom the bonds shall be delivered, and whose duty it shall be to control said bonds, and see that they are exclusively applied to the payment of the railroad iron and equipments, as provided for in this act, and for no other purpose whatever. And the said agent, before he receives the bonds of the State, shall give bond and security, to be approved by the Governor and payable to the State of Tennessee, for the application of the bonds or the proceeds thereof, to the purposes aforesaid. Provided, That before any bonds, under the provisions of this act, shall be issued to any agent of any railroad contemplated by this act, the President of any company shall first deposit in the office of the Secretary of State, a full, true and accurate list of all the stockholders, with the sums subscribed by each and every stockholder.

SEC. 20. Be it enacted, That no road embraced in this act shall be entitled to State aid unless it shall, within four years, complete at least one section of thirty miles, or the whole length of the road, if less than thirty miles long.

Those portions of the act of February 21st, 1852, providing for identification of the bonds, by means of public records, are as follows:

SEC. 7. Be it further enacted, That the different Internal Improvement Companies, to whom the

bonds of the State may be loaned under the different acts of the present Legislature, shall pay the expenses of engraving and preparing the same.

SEC. 8. Be it enacted, That the Governor of the State shall cause to be engraved and printed, the bonds which may be issued under the acts of the present General Assembly, as a loan made to Internal Improvement Companies, and the said bonds shall bear date on the first day of January prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. Be it enacted, That the coupons shall be signed and numbered by the comptroller, and the bonds shall be countersigned, sealed, and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date, and amount of said bonds, in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party receiving the said bond.

Your orators show that the State of Tennessee, by act of its General Assembly, passed on the 8th of February, 1854, increased the amount of bonds to be issued to the several "internal improvement companies from $8,000 to $10,000 per mile," and provision was made for an issue of similar bonds to be used for bridge purposes. The said act was amendatory of the act passed 11th of February, 1852, "to establish a system of internal improvement in this State," and required that the increased amount of bonds should be received, "upon the terms and conditions mentioned in the act, which this was intended to amend." By the act of February 17, 1854, the length of the sections which it was necessary for the railroads to complete before obtaining bonds of the State, was decreased from twenty to ten miles, after the completion of the first section of thirty miles. By the act of January 19, 1855, the foregoing act was amended so

that the grading only of ten-mile sections was required, in lieu of the completion of said sections. The act of October 29, 1855, was amendatory of the bridge law, above mentioned.

Your orators attach hereto copies of said acts above referred to, marked Exhibit B, and make them a part of their bill of complaint.

Your orators show that there was delivered on account of the Memphis and Charleston Railroad and to the company of that name, internal improvement bonds of the State of Tennessee, being of the numbers, dates, and in the amounts hereinafter set forth:

326 to 565, White, B, 240	$240,000
566 to 725, White, B, 160	160,000
1,506 to 1,705, White, B, 200	200,000
2,015 to 2,054, White, B, 40	40,000
2,055 to 2,154, White, B, 100	100,000
3,093 to 3,112, White, B, 20	20,000
3,403 to 3,537, White, B, 135	135,000
4,222 to 4,371, White, B, 50	50,000
4,392 to 4,441, White, B, 50	50,000
4,492 to 4,596, White, B, 105	105,000
	$1,700,000

A copy of one of the said bonds and coupons is hereto attached, marked Exhibit C.

Your orators show that the said bonds, to the amount of $1,700,000, were received by or on behalf of the Memphis and Charleston Railroad Company through the officers appointed in the act of February 11, 1852, and were, by the said company, negotiated and sold, in pursuance of law, to *bona fide* holders. The proceeds of these bonds were to be applied to enable the company to which they were loaned, to earn the interest and principal moneys of the said obligations. About nine hundred and sixty three of the said bonds, are now outstanding in the hands of *bona fide* holders. Your orator, Calvin Amory Stevens, is the owner and holder of thirty of said bonds, of $1,000 each, being of the numbers, dates, and descriptions in all respects of the bonds

heretofore described and issued to the Memphis and Charleston Railroad Company by the State of Tennessee; and all of which bonds bear date on or before January 1, 1856.

Your orator, Eugene Kelly, is the owner and holder of sixteen of the bonds issued to the Memphis and Charleston Railroad Company, and which bonds are alike in character and description with those above described.

Your orator, John T. Terry, is the owner and holder of six of said bonds of like amount and character with the bonds of your orator, Stevens, above described.

Your orator, Peter Geddes, is the owner and holder of six bonds and which are of like character and description with those above mentioned.

The said bonds are numbered and identified respectively as follows: Those belonging to Eugene Kelly are numbered 326, 333, 429, 526, 529, 530, 607, 658, 1,575, 3,422, 4,427, 4,436, 4,495, 4,517, 4,569, 4,574, all are white bonds series B: those belonging to John T. Terry are numbered 719, 3,515, 4,237, white bonds series B, and numbers 3,672, 3,673, 3,866 are green bonds series B: those belonging to Peter Geddes are numbered 419, 491, 673, 692, 1,559, 3,409, and are white bonds series B.

Your orators, Stevens, Kelly, Terry and Geddes, are likewise respectively the holders of seven coupons attached to each one of said bonds, above alleged as belonging to them respectively, the same representing the installments of interest for three and one-half consecutive years, beginning with the installment that fell due on the first of January, 1876, and including the installment of the first day of January, 1879, and amounting in the aggregate to twenty-one per cent. of the par or principal amount of each one of the aforesaid bonds. Your orators show that the holders of said bonds are very numerous, and reside in foreign countries, as well as in different parts of the United States. Their names are in great part unknown to your orators, and they are therefore not made parties hereto.

And further complaining, your orators show that the

Memphis and Charleston Railroad Company has failed to comply with the provisions of the general internal improvement law above recited, for the payment of the said installments of interest on your orators' bonds, and on the bonds of other holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orators charge like defaults upon the coupons that have fallen due and have become payable by the Memphis and Charleston Railroad Company, according to the terms of the statute, on the first day of January, 1876; on the first day of July, 1876; on the first day of January, 1877; on the first day of July, 1877; on the first day of January, 1878; on the first day of July, 1878, and on the first day of January, 1879. The State of Tennessee is likewise in default on said coupons.

Your orators are entitled to the enforcement of the lien aforesaid, for the payment of interest on their bonds, and those of other holders, and for the appointment of receivers, under the powers of this Court of equity, for the purposes described in the statute.

Your orators further show that it is provided by the statute that upon default in the payment of interest by any of the Internal Improvement Companies, upon the bonds loaned it, the right to impound the rents, issues, profits, and dividends shall accrue, for the purpose of paying over the same toward the liquidation of the unpaid interest. For the execution of that purpose, it provides that some suitable person or persons shall be appointed as receivers to take possession and control of said railroad, and all the assets thereof. Said receiver is to continue in possession and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses incident to such proceedings, to pay off and discharge the interest due on the bonds.

And now your orators show that the said railroad company pretends and claims that the aforesaid lien on its property is satisfied and discharged, without payment of

the interest or principal of your orators bonds, and that it is also absolved from the obligation which it assumed by the acceptance and use of your orators bonds to pay the interest thereon.

It claims that the discharge of said incumbrance has been effected by and through the means of certain legislation, enacted in the years 1869 and 1870, many years after the sale of the said bonds, and while the same were outstanding in the hands of bona fide purchasers thereof.

The said company pretends that by the act of February 21, 1856, increasing the sinking fund to two per cent. per annum, to commence from the date of the issuance of internal improvement bonds, and providing for reinvestment of the accruing interest in the sinking fund, it was intended that deliveries of bonds into the sinking fund should constitute a discharge of the statutory lien on the road, without payment of interest or principal of the bonds loaned to the company. It claims a similar effect to be deduced from the act passed on 20th March, 1860. Copies of the said acts are herewith attached, marked Exhibit D.

The said company likewise pretends that, by means of the acts of February 25, 1869, and of January 2, 1870, it was enabled to extinguish the obligation to pay the interest and principal of the internal improvement bonds issued to it, by means of the delivery to the State of any obligations of the State, though the said obligations were not secured by a statutory lien upon the Memphis and Charleston Railroad, or issued in aid thereof. The defendant claims to have complied with the provisions of said acts, and to have thereby discharged the said incumbrance, without payment of the bonds for which it was responsible.

Your orators show that the said pretense is fraudulent, and they charge the facts to be as follows:

During the late civil war the railroad companies did not pay the interest on the bonds issued to them, and after the war they still continued in great part in default in making the payments of interest on the said bonds. The State

of Tennessee had likewise been in default during the same time. The market value of the bonds had meanwhile fallen very greatly, and the securities were very much depreciated, to about fifty per cent or less of their par value.

Under these circumstances the officials of the railroad companies conceived the project of avoiding the liabilities of these corporations for the payment of the bonds loaned to them. Their project was to treat the lien on the railroads as the absolute property of the State, without regard to the trust in favor of the holders of the bonds whose moneys the companies had received. They purposed to induce the legislature to proceed upon this basis, and to assign the lien on each road, in consideration of the receipt by the State of an amount of its bonds from each company, without regard to whether they were the bonds loaned to and the obligations of the company delivering them, and were entitled to the lien on its road. They applied themselves to the procurement of such acts of the General Assembly of Tennessee as they deemed would assist them in the accomplishment of their projects.

Your orators show that the General Assembly did pass an act on February 25, 1869, a copy of which is hereto attached, marked Exhibit E. Your orators show that the said act, as passed, differed in material respects from the bill drafted by the agents of the corporations. It had been amended in the course of its passage through the Assembly, so as to preserve the rights of the Internal Improvement bondholders to their liens on the several railroads.

Your orators show that the railroad companies, not being content with the said act, and not deeming that they had thereby acquired even the appearance of legislative support for the project on which they desired to enter, procured, at the next session of the legislature, the introduction of a bill, which, as amended, became the act of January 2, 1870, a copy of which is hereto attached, marked Exhibit F.

Your orators further show that the said last mentioned act, as passed, differed in material respects from the bill

which the officials of the railroad corporations had procured to be introduced, as appears by the insertion of the provisions hereinafter referred to.

Your orators show that about said time the officers of some of the railroad corporations obtained the opinion of counsel that they might safely embark on the venture above described, and disregard the rights and liens of the holders of the internal improvement bonds. Your orators pray leave to bring proof of said opinions on the trial, and particularly of the opinion of Edward H. East and others. Your orators show that at the time the officials of some of the railroad companies offered the new or so-called substitution bonds for sale (which bonds they claimed had acquired the lien of your orators bonds), they published an opinion of New York Counsel seeking to show that the State had the right to treat the liens of the internal improvement bonds in the manner above described. The said transaction in all its entirety was fully understood by the railroad company, and by the purchasers of the new bonds, as appeared from the face of their bonds, the deed purporting to secure them, and the legal opinions above mentioned. They knew that they were engaged in an attempt to grasp the security and property conferred by the distinct language of the statute upon the holders of the internal improvement bonds, for the payment of the interest and principal of their bonds.

Your orators further aver and show that the said pretenses and claims are illegal and invalid and fraudulent. The defendants never had nor have they, any right to affect or impair the contract and lien which was created and entered into by and between the holders of the internal improvement bonds loaned by the State of Tennessee to the railroad company, and the State of Tennessee as trustee of the said lien or mortgage, and the railroad company as the debtor under the said contract and lien.

Your orators charge that none of the aforesaid acts of the General Assembly purport to authorize the discharge of the lien of the internal improvement bonds, issued to the rail-

road company, in any other mode than by the delivery of the identical bonds constituting liens upon the said railroad. The act of February 25, 1869, provides that the interest of the present bondholders of the State shall not be affected, and that railroad companies which have issued second-mortgage bonds, availing themselves of the provisions of that act, shall file with the comptroller, bonds of the same series as those loaned to such company, for which the State holds a first-mortgage lien. The act of January 2, 1870, requires that its provisions shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund.

Your orators charge that, under and by virtue of the provisions of the general internal improvement law of February 11, 1852, the State of Tennessee was only secondarily liable for the bonds loaned by it to the Memphis and Charleston Railroad Company, and that the said company was primarily liable under the provisions of said act, for the payment of the principal and interest of said bonds. And your orators charge that the said acts were not applicable by their terms to the lien secured to the bonds issued in aid of the Memphis and Charleston Railroad Company.

Your orators further charge that by the terms of the general improvement law of February 11, 1852, the State of Tennessee constituted herself the Trustee for whomsoever might become the holders of the bonds loaned to the several railroad companies named in the act. The terms of that trust were defined and set forth in the sections of the statute.

By the acceptance of the bonds, and the use of their proceeds by the Memphis and Charleston Railroad Company, a mortgage lien attached to the property of the company, without a deed from the company, and the conditions of that mortgage were as prescribed in the statute. By the purchase of the said bonds, the holders thereof became entitled, by contract, to the lien rights set forth in the in-

ternal improvement law. That lien was distinctly specified to be for the payment of the principal and interest of the bonds loaned to the company, as the same accrued and became due.

Your orators charge that the aforesaid acts, of date subsequent to the issuance of said bonds, in so far as they attempt, or may be construed to have authorized the satisfaction of the statutory lien established for the benefit of the holders of the internal improvement bonds of Tennessee loaned to the said company, by any other means than payment, impaired or sought to impair the obligations of the contract aforesaid, and were in violation of the Federal Constitution, and void, and all acts committed thereunder are illegal and null.

Your orators likewise show that, by virtue of their rights in equity as lienholders and the terms of the statutory mortgage above described, they are entitled to have the possession of the Memphis and Charleston Railroad, in the State of Tennessee, secured by a receivership, for the benefit of the holders of the internal improvement bonds aforesaid, loaned to the Memphis and Charleston Railroad Company, and for the payment of the interest thereon, for which the said company became bound. The receiver or receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orators show that the officials of the State of Tennessee, named in the internal improvement law for the execution of the trusts pertaining to the statutory receivership, to wit, the comptroller and the governor, claim to be bound by the subsequent acts of the General Assembly of Tennessee, passed in the years 1869 and 1870, and your orators are unable to obtain the action of the said officials, or of the State of Tennessee, as trustee for the execution of the trusts aforesaid. Your orators show that they are remediless at law and without the intervention of a court of equity.

Wherefore, your orators pray that the priority of the said lien of the internal improvement bonds and coupons aforesaid, upon all the railroad equipments, incomes, tolls, rights, privileges, property, and franchises of said Memphis and Charleston Railroad Company, within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights. That the income of said property, arising from its use in said State, may be applied to the payment of interest accrued and to accrue upon the bonds hereinbefore described, and as may appear by proofs before a master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied.

And, may it please your Honors, to grant unto your orators such further or other and different relief in the premises, as the nature of the case may require, and be consistent with equity and good conscience.

May it please your Honors, to grant unto your orators writs of subpena of the United States of America, to be directed to the said Memphis and Charleston Railroad Company, and the East Tennessee, Virginia and Georgia Railroad Company, and against all other persons interested in this matter and amenable to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day and under a certain penalty therein to be specified, personally to be and to appear before your Honors, in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such orders and decrees therein as to your Honors shall seem meet.

E. L. ANDREWS and GEORGE HOADLY,
Solicitors, and of Counsel for Complainant.

APPENDIX.

Exhibit B.

ACT OF FEBRUARY 8, 1854.

AN ACT to amend an act passed 11th February, 1852, entitled "An Act to establish a system of Internal Improvement in this State."

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That the bonds of the State shall issue to the companies mentioned in the first and tenth, and nineteenth sections of the act which this is intended to amend, and also to the "Edgefield and Kentucky Railroad Company," "Central Southern Railroad Company," "Knoxville and Charleston Railroad Company," "Mississippi Central and Tennessee Railroad Company," "Knoxville and Kentucky Railroad Company," "Tennessee Western and Charleston Railroad Company," and "Cincinnati, Cumberland Gap and Charleston Railroad Company," upon the terms and conditions mentioned in the act which this is intended to amend, but to the extent of ten thousand dollars (instead of eight thousand) per mile. Provided, that the aid of the State shall be extended to the South Carolina, Tennessee and Kentucky Railroad Company, in lieu of the Knoxville and Charleston Railroad Company, to the extent of fifty-five miles, and no more, in the event the Blue Ridge Railroad Company of South Carolina shall adopt the charter of said South Carolina, Tennessee and Kentucky Railroad Company, and obligate themselves in such manner as shall be satisfactory to the Governor, not to stop the construction of the said road at a junction with the East Tennessee and Georgia Railroad, but to build said road to South West Point; and said South Carolina, Tennessee and Kentucky Railroad Company, before it shall receive the aid herein provided, shall bring itself within the general provisions in all respects, of the act which this is intended to amend. But should the Blue Ridge Railroad Company not adopt such charter, and enter into the obligations aforesaid, then the provisions of this act and that which it is intended to amend, shall apply in all things to the Knoxville and Charleston Railroad Company.

SEC. 2. Be it further enacted, That bonds of the State shall issue to the companies mentioned in the first section of this act, and the tenth and nineteenth sections of that which this is intended to amend, for each bridge that said companies, or either of them, may have to build in East, Middle, and West Tennessee, across the Holston, Clinch, Big Hatchie, Tennessee, and Cumberland rivers, for the maximum sum that bonds are provided to be issued to said East Tennessee and Georgia Railroad Company, by an Act passed February 4, 1852, entitled, "An Act to aid in the completion of the East Tennessee and Georgia Railroad," and upon the terms and conditions mentioned in said Act (except the 2nd section), and also in the fifth and sixth sections of an Act, passed February 26, 1852. entitled, "An Act to charter the Chattanooga, Blue

Spring, and Cleveland Railroad Company, and for other purposes," and said bonds to be issued under this section shall be included in the aggregate amount of stock raised by said companies in the same manner that the three hundred thousand dollars of bonds loaned to the East Tennessee and Virginia Railroad Company, under an Act, passed January 15, 1852, to enable said company to build bridges, are provided to be included in the aggregate amount of stock to be raised by the East Tennessee and Virginia Railroad Company.

SEC. 3. Be it further enacted, That the office of "Commissioner of Roads" be filled by the appointment of the Governor; that the incumbent shall hold his office for two years, and shall receive an annual salary of two thousand dollars. It shall be his duty to examine into the condition of railroad companies applying for the bonds of the State, and to report on oath to the Governor, the condition of said roads and the companies owning them; inquiring into and reporting all the facts necessary to be reported upon under this Act, and that which this is intended to amend. He shall further superintend and supervise the interest of the State in all the railroads and turnpike roads of this State, and whenever he may deem it necessary, report to the Governor any facts he may believe to be of importance to said interest. The said commissioner, in making his investigations, shall have the power to administer oaths, and send for persons and papers; and may, if in the opinion of the Governor it should be necessary and proper, apply to the Courts for aid to protect said interests; and it shall not be lawful for the Governor to issue such bonds to any railroad company until he shall be satisfied they have complied with the law.

SEC. 4. Be it enacted, That if any officer, agent, or servant of any railroad company receiving the bonds of the State, shall appropriate said bonds or the money arising from the sale thereof, or any portion of either, to any other use than that prescribed in the Act under which said bonds shall be issued, such person or persons so offending shall be deemed guilty of a felony, and, upon conviction, shall undergo confinement in the penitentiary for a period of not less than five nor more than fifteen years.

SEC. 5. Be it enacted, That no road embraced in this Act shall be entitled to its provisions, unless it shall, within four years, grade one section of thirty miles.

SEC. 6. Be it enacted, That the Governor shall indorse and guarantee the bonds of the Nashville and Chattanooga Railroad Company to an amount not exceeding six hundred and fifty thousand dollars, and the State shall thereupon, by virtue of this Act, be invested with a lien upon the entire road of said company, with all its equipments, fixtures, etc., and shall have the same remedies for enforcing said lien as are given by previous Acts of the General Assembly directing an indorsement of the bonds of said company. The provisions of this Act shall extend to all railroad companies mentioned in the aforesaid Act, passed

February 11, 1852, whose charters, routes or names have been, or may hereafter be, changed; and if any two or more of said companies shall be consolidated, they, or the consolidated company, shall still be entitled to the provisions of this Act.

SEC. 7. Be it further enacted, That the Mississippi Central and Tennessee Railroad Company shall be entitled to the provisions of this Act from Jackson, Tennessee, to the Tennessee River, for any extension of said road which said company may make from Jackson by way of Huntingdon in the direction of Nashville. And, provided further, that nothing in this Act shall be so construed as to extend the time for the completion of the first section of the roads mentioned in the said Act of 11th February, 1852.

SEC. 8. Be it enacted, That the bonds to be issued under the provisions of this Act shall in no case be sold at less than par.

SEC. 9. Be it further enacted, That the first section of an Act, passed February 11, 1852, entitled "An Act to establish a system of Internal Improvements in this State," be so amended that whenever the East Tennessee and Virginia Railroad Company shall have graded and shall have ready to put down the necessary timbers for the reception of rails, as is contemplated in said section, from Knoxville to the Holston River at Magbie's Ferry, or to the Holston River at Middletown, at each end, it shall be the duty of the Governor to issue bonds of the State to the company, as is required in said section, and when said company shall have complied with the above requisitions it shall be considered as fulfilling the requirements in full of the first section of the Act above referred to.

SEC. 10. Be it enacted, That the provisions of this Act shall extend to and embrace the Mississippi and Tennessee Railroad Company, chartered 5th December, 1853, and the State aid given to other roads by this Act shall be given in like manner to the said Mississippi and Tennessee Railroad, so far as the same lies in the State of Tennessee.

SEC. 11. Be it enacted, That the farther time of two years is hereby extended to the Southwestern Railroad Company to bring themselves within the provisions of the Act entitled "An Act to establish a system of Internal Improvements in this State."

SEC. 12. Be it further enacted, That this Act shall take effect from and after its passage.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF FEBRUARY 17, 1854.

AN ACT to amend the charter of the Memphis and Somerville Turnpike Company, and for other purposes.

. . . . . .

SEC. 5. Be it enacted, That the fourth section of an Act to establish

a system of internal improvements in this State be amended by striking out the word twenty wherever it occurs in said section, and inserting the word ten, so as to allow all the railroad companies entitled to the benefits of said Act and an Act, passed February 8, 1854, as an amendment thereto, to obtain the bonds of the State upon sections of ten miles instead of twenty miles, after the first section of thirty miles has been completed.

WM. H. WISENER,
Speaker of the House of Representatives.
EDWIN POLK,
Speaker of the Senate.

ACT OF JANUARY 19, 1855.

AN ACT to amend the Internal Improvement Acts of 1852 and 1854.

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That hereafter it shall not be necessary for the Engineer-in-Chief to swear to the subscription list, solvency and condition of any railroad company applying for State aid, but the oath required of the Engineer shall be taken by the President and Treasurer of the company, whose duty it is to know of the condition, solvency and financial affairs of said company.

SEC. 2. Be it further enacted, That it shall be lawful and proper for the East Tennessee and Virginia Railroad Company to lay down iron at either end of said road, and to draw the bonds of the State according to the General Internal Improvement Act, passed February 11, 1851-2, and the Act of February 8, 1853-4.

SEC. 3. Be it enacted, That the fifth section of the Act of February 17, 1854, be so amended that hereafter the bonds of the State may issue for ten miles or more of road graded, as required by existing laws, after the completion of the first thirty miles.

SEC. 4. Be it further enacted, That so much of the General Internal Improvement Acts of 1851-2, and 1853 and 1854, as requires the several railroad companies embraced within the provisions of the aforesaid acts to have the bridges, abutments and embankments on the several sections of their respective roads completed before the bonds of the State shall issue to the companies of said roads, be so amended as to accept those bridges, abutments and embankments which have been provided with State aid.

SEC. 5. Be it enacted, That this Act shall take effect from and after its passage.

NEILL S. BROWN,
Speaker of the House of Representatives.
EDWARD S. CHEATHAM,
Speaker of the Senate.

Exhibit C.

$1,000. $1,000.

No. UNITED STATES OF AMERICA. No.

Know all men by these presents: That the State of Tennessee acknowledges to owe to , or order, One Thousand Dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the day of , 18 , with interest thereon, at the rate of six per cent. per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payments of said sums of money. and the interest thereon, at the times and places, and in the manner aforesaid, the faith of the said State of Tennessee is irrevocably pledged, this bond being issued in pursuance and by authority of an act of the General Assembly of said State, passed February 11th, 1852, to establish a system of Internal Improvements in said State.

In testimony whereof, and in pursuance of the acts aforesaid, I, , Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the great seal of the State affixed.

[ ] Done at the Executive Department in the city of Nashville, this day of , 18 .

To which was attached the following form of coupon:

30. THE TREASURER OF THE STATE OF TENNESSEE. 30.

Will pay the bearer THIRTY DOLLARS, in the city of New York on the first day of January, 1877, being the semi-annual interest then falling due on bond No.

J. C. SUTTRELL, 30.
Comptroller.

Exhibit D.

ACT OF FEBRUARY 21, 1856,

AN ACT to aid in constructing a railroad from Chattanooga to the East Tennessee and Georgia Railroad, in the direction of Knoxville, and for the benefit of the East Tennessee and Virginia Railroad, and for other purposes.

. . . . . .

SEC. 5. Be it further enacted, That it shall be the duty of the several railroad companies in this State, who have received, or may hereafter receive, bonds of the State, or the indorsement of their bonds by the State to aid in the construction of their several roads, under the provisions of the act of 1851, 1852, and the acts amendatory thereto, at the expiration of five years from the issuance or indorsement of their several

bonds, annually to set apart and pay over to the Treasurer of the State two per cent. per annum upon all bonds which have been or may hereafter be issued or indorsed as aforesaid as a sinking fund for the ultimate redemption of the bonds issued or indorsed as aforesaid; which sinking fund, when paid over, the Governor, Comptroller of the Treasury, and President of the Bank of Tennessee shall invest in the bonds of the State, and reinvest all accruing interest in like securities; and they are hereby constituted a board of commissioners for the management, government, and control ot said sinking funds.

SEC. 6. Be it further enacted, That should any of said railroad companies fail, or refuse to comply with the provisions of the fifth section of this act, it shall be the duty of the Governor forthwith to notify the Attorney-General of the district in which is situated the place of business of said company failing or refusing as aforesaid, of the fact; and thereupon the Attorney-General shall immediately proceed against said company to collect said sinking fund, in the manner prescribed in the sixth section of the act entitled "An Act to establish a system of internal improvements in this State," passed February 11, 1852.

NEIL S. BROWN,
Speaker of the House of Representatives.

EDWARD S. CHEATHAM.
Speaker of the Senate.

ACT OF MARCH 20, 1860.

AN ACT to provide for the equalization and investment of the sinking fund, on the bonds issued to or indorsed for railroads in this State.

SECTION 1. Be it enacted by the General Assembly of Tennessee, That the money or bonds, that have heretofore or may be paid by the cities or railroad companies in this State to the Sinking Fund Commissioners by the 1st of January, 1860, together with the accruing interest thereon to that date, shall be passed directly to the credit of the party having so paid the same, and be a release to said party for that amount on the debt due by them to the State of Tennessee.

SEC. 2. Said bonds shall all be canceled by said commissioners, and if indorsed bonds of any railroad company shall be canceled as hereinafter provided for the cancellation of State bonds, and shall be delivered over to said company or corporation, taking the President's of said company, or the officers' of said company receipt for the same, which receipt shall be filed and the copy of the same placed upon a book, which the said commissioners shall keep for that purpose. If State bonds, they shall be canceled and filed in the office of the Secretary of State as hereinafter provided.

SEC. 4. That after the first day of January, 1860, all railroad companies or city corporations who have or may hereafter receive the bonds of the State, or its indorsement of their own bonds under the general internal improvement law of this State, or any other law, shall be required to

pay two and one-half per cent. per annum as a sinking fund on the amount of the bonds so issued or indorsed by the State for said company or corporation, to be paid in equal installments on the first days of April and October, five years after the date of said bonds, and annually thereafter.

SEC. 4. All bonds issued during any one year shall be dated on the first day of January of that year.

SEC. 5 Said companies or corporations may pay said sinking fund in cash or in the like character of bonds that may have been issued or indorsed by the State for said company at their face or par value.

SEC. 6. If paid in money, the commissioners shall invest it immediately in the bonds of the State, and shall have the same canceled and filed as heretofore provided. Such bonds are to be of the same character as those issued to such company or corporation.

SEC. 7. The sinking fund, when paid, in all cases shall be passed directly to the credit of said company or corporation, and be a release to said company or corporation from that amount due by them to the State. The commissioners shall issue a receipt to each company or corporation for such payment, retaining a duplicate in a well bound book kept for that purpose.

SEC. 8. Each and every railroad company or city corporation shall provide the interest semi-annually, as now provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to or indorsed by the State for said company as heretofore provided.

SEC. 9. The Comptroller of the State shall keep a regular account against each company or corporation, charging them with the amount of bonds originally issued to or indorsed for said company or corporation by the State, and crediting them by the amount of the sinking fund paid, and shall furnish the Treasurer of State a statement of the amount due by each company or corporation on the first day of June and December of each year, that he may know how much interest each company or corporation has to pay.

SEC. 10. The commissioners of the sinking fund shall cancel all bonds of the State as soon as paid in or purchased, by cutting out the Governor's and Secretary of State's names, and so defacing each coupon that it cannot by any possibility be used or circulated, and shall file the same in the Secretary of State's office.

SEC. 11. This law shall be in full force from and after its passage, and shall repeal all laws in conflict with it, but shall not be so construed as otherwise to affect any law on the subject of the sinking fund or the payment of interest due on State or indorsed bonds.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Exhibit E.

ACT OF FEBRUARY 25, 1869.

AN ACT to Liquidate the State Debt, contracted in aid of Railroad Companies in the State of Tennessee.

Whereas, under the General Internal Improvement Laws of the State, passed from time to time, aid has been granted to various railroad companies by the loaning of six per cent. bonds of the State, to enable said companies to iron, equip, build and bridge, and for other purposes, which is now secured to the State by a first mortgage or lien on the franchise, property and fixtures of respective railroad companies; and

Whereas, it is desirable for the general welfare of the State that the State shall be reimbursed such amounts as have been advanced to the different railroad companies, as fast as may be practicable; therefore,

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That the respective railroad companies, or either of them that have created indebtedness to the State, are hereby authorized to repay any amount of the principal of such indebtedness as they have respectively created in the bonds of the State, in snch amount and at such times as may be practicable:

Provided, however, that nothing in this Act shall be so construed as to release said railroad companies from any lien which the State may have on the same for any unpaid interest now due on said bonds of the State authorized to be surrendered by this act.

SEC. 2. Be it further enacted, That any railroad company or companies repaying any indebtedness due the State under the provisions of this act, are authorized to issue bonds of equal amount and denomination with the bonds of the State paid and delivered up for cancellation, as hereinafter provided, which said railroad bonds, so issued in lien of any amount of State bonds, shall be certified to by the comptroller, entered in a book to be kept for that purpose, with date, number, and amount, and shall be a lien, pro rata in amount and of equal validity and effect with the unretired part of the State indebtedness upon such railroad, and all its property, franchises, fixtures, and material.

SEC. 3. Be it further enacted, That in order to facilitate the railroad companies that may wish to avail themselves of the provisions of this act in paying the indebtedness due to the State respectively, they, or any of them, are hereby authorized to consolidate their property, in whole or in part, with other railroad companies, and issue bonds and stock as provided for in the second section of this act, and may adopt the corporate franchise of either of the roads as the stockholders may elect, and each railroad company paying its indebtedness, and such railroad companies as may consolidate under the provisions of this act, are hereby authorized to determine, by a vote of the stockholders of said company or consolidated companies, the number of directors of such company, and elect the same under the new organization, and that the

said directors, so elected, shall, according to the by-laws and rules of said corporation, elect one of their number president of said company.

SEC. 4 Be it further enacted, that the comptroller of the State shall receive from the railroad companies, or any of them, bonds of the State in such amounts as may be presented, and cancel the same in the presence of the officer or agent of the railroad company paying them in, and execute to the said railroad company or companies duplicate receipts for the amount and number of said bonds so paid in, and it shall further be the duty of the comptroller to certify on the bonds of any railroad company or companies repaying indebtedness due to the State, that the same has been paid, and that the so certified (bonds) are secured by first mortgage.

Provided, That said railroad companies shall liquidate their indebtedness prior to the maturity of the bonds that have caused said indebtedness; and be it further provided, that said bonds, when executed by the respective railroad companies or either of them, shall be deposited with the Comptroller of the State, whose duty it shall be to deliver said bonds, or any number of them, to the president and directors of the company, on the deposit by said president and directors or authorized agent of an equal amount of the six per cent. bonds of the State of Tennessee, with unpaid coupons attached, and the company's first mortgage bonds, authorized to be issued by this act, shall have no validity or value except the comptroller's certificate is affixed on the face of each bond, that said bond is executed, and issued and by virtue of law taken the place of a bond of the State and is the first mortgage bond.

SEC. 5. Be it further enacted, That the comptroller shall be entitled to a fee of one dollar on each thousand dollars of the bonds certified as aforesaid, to be paid by the railroad company for which the same is done; and it shall be lawful for the comptroller to discharge the duties imposed by this act, by and through an agent in the city of New York; and all the provisions of this act shall attach to and become a part of the charter of any railroad company or companies acting under it.

SEC. 6. Be it further enacted, That by and with the consent of the board of directors of any railroad company in this State under the General Improvement Law, passed the 11th of February, 1852, and all the amendments thereto, that any person or corporation may, by paying the indebtedness of such railroad company to the State in the bonds of the State, as provided for by the law, be, and they are hereby substituted and entitled to all the liens against said company for the payment of said debt that the State had or has by law, and the Governor and Secretary of State shall give such party or parties paying such indebtedness a certificate showing the facts, which shall be evidence against said company of such indebtedness to said individuals or corporations.

SEC. 7. Be it further enacted, That any person or persons may, with the consent and approbation of any railroad company, which is indebted to, and for which the State of Tennessee holds a lien, pay the said debt,

so far as the State is concerned, in the bonds of the State, or any coupons of bonds at par, and the person or persons so paying the debt of any railroad company with the consent of such railroad company, shall, upon filing with the treasurer of this State the written assent of said railroad company, under the corporate seal of said railroad company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being to place the person or persons so paying with the consent of said railroad company in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

SEC. 8. Be it further enacted, That any person or persons who may with the consent and approbation of any railroad company, pay any part or portion of the indebtedness of such company, as provided in Sec. —, shall have, hold, and be subrogated in all the rights, privileges, and lien or liens of the State, to the extent of, and in proportion, to the amount of such indebtedness, with the same rights and privileges the State now has, to the extent of such payment or payments: Provided, the passage of this act shall not decrease the lien of the State upon any railroad of the State until the entire claim of the State is fully liquidated, or affect the interest of the present bondholders of the State; provided, that railroad companies which have issued second mortgage bonds, availing themselves of the provisions of this act, shall file with the Comptroller bonds of the same series as those loaned to such company, for which the State holds a first mortgage lien. Provided, the bonds to be issued by the company, under the provisions of this act, shall not have a longer time to run than the bonds of the State thus released and canceled.

SEC. 9. Be it further enacted, That this act shall take effect from and after its passage.

Exhibit F.

ACT OF JANUARY 2, 1870.

AN ACT for the Payment of the State Debt.

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, That an act entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, be, and the same is hereby amended, so as to allow any railroad company which may be indebted to the State by reason of the bonds of the State loaned to said railroad company to pay into the State, in liquidation of the principal of said indebtedness, any of the legally issued six per cent. bonds of the State of Tennessee outstanding, without regard to series or number; and such payment shall, to the extent made, be a full and perfect discharge of the lien which the

State holds upon the property of such railroad company, held by virtue of the bonds of the State issued to such railroad company, whether they be the same bonds or the same series of bonds issued to said company under the act passed February 11, 1852, and acts amendatory thereof, or not.

SEC. 2. Be it further enacted, That railroad companies issuing their own mortgage bonds under the provisions of the act which this is intended to amend, be allowed to fix the rate of interest which the said bonds of the railroad company are to bear, and all laws in conflict are hereby repealed. Provided, that when said railroad companies owe interest already due, coupons past due shall be taken by the Comptroller or Treasurer in discharge of such indebtedness for interest.

SEC. 3. Be it further enacted, That when any company, under the provisions of this act, shall pay into the treasury of the State bonds which have been issued by the State to said company, the said bonds shall be canceled; but should any company, in discharge of its own debts, pay into the treasury any bonds that were issued to other companies that may still be indebted to the State, such bonds so paid in shall not be canceled, but shall be held by the State as purchased bonds, retaining a lien for the State upon the road to which said bonds were originally issued until the debt of said road to the State shall be fully discharged, when the bonds so held shall be canceled. Provided, that the provisions of this act shall not be so construed as to allow the payment and satisfaction of debts created by bonds issued by the State, and upon which the State is secondarily liable, nor to the payment of the sinking fund, now required by law, of the railroad companies of this State.

SEC. 4. Be it further enacted, That this act shall take effect from and after its passage.

1

United States Circuit Court,

WESTERN DISTRICT OF TENNESSEE.

IN EQUITY.

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THE MEMPHIS & CHARLESTON RAILROAD COMPANY AND EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY,

ads.

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CALVIN AMORY STEVENS AND OTHERS.

Answer to Amended Bill.

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HUMES & POSTON,
JOSEPH B. HEISKELL,
C. F. SOUTHMAYD,
Solicitors
and of Counsel for Defendants.

IN THE

Circuit Court of the United States

FOR THE WESTERN DISTRICT OF TENNESSEE.—SIXTH JUDICIAL CIRCUIT.

IN EQUITY.

The answer of the MEMPHIS & CHARLESTON RAILROAD COMPANY and the EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY, defendants, to the bill of complaint, as amended, of Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of themselves and the other holders of the Internal Improvement bonds issued by the State of Tennessee to the Memphis & Charleston Railroad Company who may come in and contribute to the expenses of the litigation.

These defendants, answering the said bill as amended, here repeat and make part of this answer the original answer which they heretofore filed to the said bill before the amendment thereof as such bill was filed by the said Calvin Amory Stevens, without joining the said Eugene Kelly, John T. Terry and Peter Geddes, the now co-complainants, and a printed copy of which original answer is hereto annexed, and everything in the said original answer contained, as fully and with like effect as if such original answer and everything therein contained were set forth at large and embodied in this answer, and, in addition thereto, these defendants hereby make the like allegations, statements, objec-

tions, defences and claims respectively as to and in 9
respect of and against the complainants in the bill as now amended, and each and every of them, and as to and in respect of the Tennessee State bonds and the coupons thereof by the amended bill alleged to be held or owned by the complainants respectively, or by any of them; and as to and in respect of all former owners and holders of such bonds respectively, or the coupons thereof; and as to and in respect of all and each of the claims asserted in the bill as amended by or on behalf of the complainants 10
respectively, as in the said original answer filed by these defendants were contained, as to or in respect of or against the said original complainant, Calvin Amory Stevens, or as to or in respect of the Tennessee State bonds or the coupons thereof, in the said original bill alleged to be owned or held by him, or as to or in respect of any former owner or owners of such bonds or coupons respectively; or as to or in respect of all and each or any of the claims asserted by the said Calvin Amory Stevens, in his said ori- 11
ginal bill; and these defendants hereby repeat and make the said original answer, and everything therein contained, applicable to the present complainants and each of them, and to the bonds and coupons alleged to be owned or held by them respectively, and to the alleged claims and causes of suit now alleged by the complainants, or any of them, as fully and completely as the same were by said original answer applicable to said Calvin Amory Stevens and the bonds and coupons alleged to be owned or held by 12
him, and the alleged claims and causes of suit which were set forth in his said original bill.

And these defendants, further answering the said bill, as now amended, make additional answer thereunto as follows—that is to say:

These defendants have no knowledge or information that the complainants, respectively, or any or

either of them are, or at the time of the filing of the bill, or of the amendment thereof, by bringing in the new complainants, were the owners or holders of the bonds of the State of Tennessee issued to the Memphis & Charleston Railroad Company, or any of the same, or of the coupons thereof, or any of the same, which in the bill, as amended, are alleged to be held or owned by the complainants, respectively; and these defendants are wholly ignorant and uninformed of the truth of the allegations of the bill, as amended, in this behalf, save that they have been informed, and believe, and therefore aver, that the complainant, Stevens, was not at the time of the filing of the bill, nor at the time of the amendment thereof, and is not now the owner or holder of the said bonds and coupons which he claims to own, nor of any of the same; and that the other complainants, respectively, at the time of their uniting in this suit were not, and now are not the owners or holders of said bonds and coupons, which they, respectively, claim to own, nor any of the same; and these defendants deny each and all of the allegations of the bill relating to the alleged ownership or holding by the complainants, respectively, of said bonds and coupons, and require the complainants to make strict proof thereof.

And these defendants further answering say, that before and at the time of the enactment of the said Internal Improvement law of February 11th, 1852, it had been ascertained by experience, and was at said time well known and understood and perfectly notorious, both in Tennessee and New York, that Tennessee State bonds pure and simple, resting upon the faith and credit of the State and upon that alone, and not secured to the holder by any lien upon a railroad or upon anything else, had a better credit and brought and would bring a higher price in the market, than the bonds of Tennessee railroad

companies, secured by mortgage liens upon their 17
railroads, and further secured by the endorsement
or guaranty of such bonds by the State of Tennes-
see, and that at that time the price in the market of
the Tennessee railroad companies' mortgage bonds,
endorsed by the State of Tennessee under legislative
acts antecedent to said Internal Improvement Act
of February 11th, 1852, of which endorsed bonds
there was then a considerable amount outstanding,
was materially less than the market price of Ten-
nessee State bonds pure and simple, resting alone 18
upon the faith and credit of the State, and in re-
spect of which there was no lien, or pretence of a
lien upon a railroad or upon anything else, and that
the said Internal Improvement Act of February
11th, 1852, was shaped as it was with the design
and purpose of gaining in the negotiation of the
bonds issued thereunder such advantage in price of
Tennessee State bonds, pure and simple, and for
which the State was primarily and alone liable, over
railroad mortgage bonds on which the State was or 19
should be liable as surety ; and that the actual sales
and negotiations by the Memphis & Charleston
Railroad Company and by the other railroad com-
panies respectively, of the Tennessee State bonds
received by them respectively under said Internal
Improvement Act of February 11th, 1852, and un-
der the amendments thereof, from time to time,
were made under and in conformity with the idea,
design, and purpose hereinbefore last above stated,
and the purchases and takings thereof were in like 20
conformity, and with the like idea, and said bonds
upon the original sales and negotiations thereof by
the Memphis & Charleston Railroad Company, and
by the other railroad companies receiving bonds
under said act respectively, were accordingly sold
and purchased upon the understanding that they
were Tennessee State bonds, pure and simple, for

which the holder was to look to the State, and to it alone, and not bonds primarily payable by a railroad company, and for which the State was to be regarded as a surety, nor bonds in any way secured to the holder by or connected with a railroad lien or by any responsibility of a railroad company for the payment thereof to the holder, and said bonds accordingly commanded and brought in the market the aforesaid advantage in price borne by Tennessee State bonds, pure and simple, for which the State was primarily and alone liable, over railroad mortgage bonds, upon which the State was surety, and that all subsequent purchases of and dealings in said bonds were upon the same understanding and footing, and that the idea of said bonds being anything else than Tennessee State bonds, pure and simple, or that there was any personal liability of the railroad companies to which said bonds had been lent by the State, for the payment of either the interest or principal of such bonds to the holders, or any lien upon the railroads respectively, in favor of or in any way available to or for the benefit of the holders of such bonds, was not entertained nor conceived by the complainants or by any of the holders of the bonds they now claim to own, nor by any other holders of Tennessee State bonds issued under said Internal Improvement Acts, until very shortly before the commencement of this suit, nor until long after the assignment and transfer made by the State of Tennessee to A. Iselin & Co., of the State claim against the Memphis & Charleston Railroad Company, for or in respect of the bonds which had been loaned to it under said Internal Improvement Act, and the similar settlements made by other railroad companies.

And these defendants further answering, say, that prior to said assignment and transfer to A. Iselin & Co., the Memphis &

Charleston Railroad Company paid to the State 25
of Tennessee under and in pursuance of the requirements of the statutes referred to in the original answer the sum of two hundred and ninety-one thousand and sixty-six dollars and thirty-two cents, upon account of the said railroad company's indebtedness to the State for and in respect of the principal of the Tennessee State bonds loaned to said company under said Internal Improvement Act, and received in pursuance of said acts a receipt for such payments and an acknowledgment of 26
discharge of the debt *pro tanto*.

And these defendants, further answering, say, that as early as the year eighteen hundred and sixty-five, the State of Tennessee made a settlement with the Louisville & Nashville Railroad Company for and in respect of the entire amount of its indebtness to the State for and in respect of the principal and interest of the Tennessee State bonds which had been loaned to said company under the Internal Improvement Act aforesaid, by receiving, 27
in payment and satisfaction of such indebtness, Tennessee State bonds at par, not being the identical bonds which had been loaned to that company, unless in so far as some small amount of these bonds may accidentally have been included in the bonds so received in settlement, and thereupon giving to said railroad company a full release and discharge for such indebtedness, and of the lien therefor, under the Internal Improvement Act, and in such transaction the State of Tennessee distinctly asserted by 28
assumed the existence of the State's full, complete and unqualified ownership and control of such debt and lien, with the right thus to deal with and discharge the same, and the non-existence of any right on the part of the holders of the State bonds, which had been loaned to said railroad company, to interfere with or question or complain of the same, the

State of Tennessee then being and for several years having been in default in respect of the payment of the interest on said bonds as well as upon its other indebtedness. The acts and proceedings of the State of Tennessee, under which this settlement was made with and discharge given to the Louisville & Nashville Railroad Company, were open, public and notorious, and included joint resolutions of the legislative bodies of the State and proceedings of a Board of State officers, all distinctly proceeding upon such basis of complete ownership, control and right of settlement and discharge vested in the State, and of non-existence of any right or interest of the State bondholders, and the same covered a period of many months before the settlement was actually effected and the discharge given; and during all this period the assertion or assumption of the existence of such right and power on behalf of the State and the State's intention to exercise it, were open, public and notorious, as well in New York and elsewhere where Tennessee State bonds were held as in Tennessee, and well known to and understood by the great mass of Tennessee State bondholders, including the complainants respectively, and the then holders of the bonds which they now claim to own, and neither the complainants, nor any of them, nor any holder of Tennessee State bonds ever raised or intimated any objection to, or denial or question of such right or power on the part of the State, or gave notice of, or asserted, set up, or even intimated or suggested that the lien upon the railroads under the Internal Improvement Acts was one in which the State bondholders had any right, title or interest, but they each and all willfully and knowingly refrained from so doing, and stood by and saw the said transaction take place without objection, and fully and completely acquiesced in, admitted and assented to the claim,

assertion and exercise by the State of such right 33
and power on its behalf, thus to control, deal with
and discharge such debt and lien, and after such
non-notification of claim and acquiescence, and
practical recognition of and assent to such claim,
right and exercise of power by the State, and non-
existence of any interfering right or title on the
part of the bondholders, and after the many years
of subsequent delay and acquiescence, the holders
of said Tennessee State bonds, including the com-
plainants respectively, are now equitably estopped 34
from setting up the contrary construction of the In-
ternal Improvement Act which the complainants
now assert, or from impeaching the said transaction
between the State and A. Iselin & Co., or the set-
tlements made with, and the releases and discharges
given to railroad companies respectively by the
State of Tennessee under the like right, control and
power as was so asserted and acquiesced in in re-
spect of the settlement with the Louisville & Nash-
ville Railroad Company. 35

And these defendants hereby set up and make part of this answer with like effect as if here recited at large the Act of the Legislature of the State of Tennessee, entitled, "An Act to fund the past due bonds and coupons of the State, and to sustain the credit thereon," approved March 17, 1873.

And these defendants further say, that the complainants respectively, and the respective holders at the time being of the bonds which they now claim to hold, as well as the other holders respectively of 36
the Tennessee State bonds, issued and loaned under the said Internal Improvement Act of February 11, 1852, and its amendments respectively, from time to time, to the Memphis & Charleston Railroad Company, as likewise to the other railroad companies respectively, funded respectively the past due coupons of their said bonds, under and in pur-

State of Tennessee then being and for several years having been in default in respect of the payment of the interest on said bonds as well as upon its other indebtedness. The acts and proceedings of the State of Tennessee, under which this settlement was made with and discharge given to the Louisville & Nashville Railroad Company, were open, public and notorious, and included joint resolutions of the legislative bodies of the State and proceedings of a Board of State officers, all distinctly proceeding upon such basis of complete ownership, control and right of settlement and discharge vested in the State, and of non-existence of any right or interest of the State bondholders, and the same covered a period of many months before the settlement was actually effected and the discharge given; and during all this period the assertion or assumption of the existence of such right and power on behalf of the State and the State's intention to exercise it, were open, public and notorious, as well in New York and elsewhere where Tennessee State bonds were held as in Tennessee, and well known to and understood by the great mass of Tennessee State bondholders, including the complainants respectively, and the then holders of the bonds which they now claim to own, and neither the complainants, nor any of them, nor any holder of Tennessee State bonds ever raised or intimated any objection to, or denial or question of such right or power on the part of the State, or gave notice of, or asserted, set up, or even intimated or suggested that the lien upon the railroads under the Internal Improvement Acts was one in which the State bondholders had any right, title or interest, but they each and all willfully and knowingly refrained from so doing, and stood by and saw the said transaction take place without objection, and fully and completely acquiesced in, admitted and assented to the claim,

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And these defendants further say, that the complainants respectively, and the respective holders at the time being of the bonds which they now claim to hold, as well as the other holders respectively of 36
the Tennessee State bonds, issued and loaned under the said Internal Improvement Act of February 11, 1852, and its amendments respectively, from time to time, to the Memphis & Charleston Railroad Company, as likewise to the other railroad companies respectively, funded respectively the past due coupons of their said bonds, under and in pur-

suance of said Act of March 17, 1873, and received new State bonds therefor, as by said Act provided, and likewise registered, or procured to be registered, under and in pursuance of said Act of March 17, 1873, the said Internal Improvement bonds of the State of Tennessee, so by them held, and accepted and assented to said Act of March 17, 1873, and that such action on their part respectively, was with full notice and knowledge of the previous Acts of the Legislature of Tennessee, before referred to herein, and in the original answer of this defendant herein, and particularly the said Acts of March 20, 1860, February 25, 1869, January 2, 1870, and of the several acts and proceedings had in pursuance thereof, and likewise of the proceedings in Chancery under which divers of the Tennessee railroads, upon which liens were held, under said Internal Improvement Act, had been sold out for prices payable in State bonds not issued to the railroads whose roads were thus sold, and with full notice and knowledge that as to nearly all the railroads upon which liens had been created under the said Internal Improvement Act and its amendments from time to time, the State had made settlements for such indebtedness, and discharged or assigned the said lien therefor, or sold out the roads as aforesaid in enforcement of such lien, upon the basis and assumption of such lien being wholly owned by and controllable by the State at its pleasure, and that the State bondholders had no right or interest therein, and that by such transactions the State had, before such funding of coupons and registration of the bonds, become, as between itself and the railroad companies or their assigns, bound to pay or discharge such State bonds originally loaned to the railroad companies, as the proper debt of the State, without any recourse over against the railroad companies or their roads in re-

spect to the same, and that by such registration of 41
the bonds and funding of past due coupons, under
and in pursuance of said Act of March 17, 1873, the
said complainants respectively, and the said other
holders of Tennessee State bonds, which had been
issued under the Internal Improvement Act, with
its amendments from time to time, recognized,
treated, and dealt with the State as its sole debtor
for the principal and interest of such bonds, and
made new bargains and agreements with the State
in respect of the same varying the original terms, 42
and acquiesced in and assented to the practical
construction which had been put upon the Internal
Improvement Act in respect of the lien and its dis-
charge as aforesaid, and the settlements and dis-
charges which had been made by the State as afore-
said, and that by reason of the premises aforesaid
the complainants respectively and the said other
holders of Tennessee State bonds are estopped and
precluded, if otherwise they would not be, from
impeaching or setting aside such settlements and 43
discharges, and from setting up or asserting as
against these defendants or their property any such
claims as are set up or asserted by the complainants
in this suit.

And in addition to the matters alleged hereinbe-
fore and in the original answer of these defendants
herein, relative to the practical construction placed
upon the Internal Improvement Act of 1852 by the
State, the railroad companies and the State bond-
holders, in respect of the character and ownership 44
and control of the statutory lien upon the railroads,
created under or in virtue of said act, and relative
to the acquiescence and assent of the complainants
and the former holders of the bonds they claim to
own, and the other holders of Tennessee State bonds
issued under said Internal Improvement Act, and
its amendments from time to time, and as to the

several acts, doings, and proceedings of the State in respect of such lien, and the settlement and discharge of such debt and lien, these defendants further answering say that the complainants respectively, and the holders at the time being of the bonds, which they now claim to own respectively, and the other holders respectively of Tennessee State bonds, issued under said Internal Improvement Act, and its amendments from time to time, have in various other ways acquiesced and concurred in the practical construction placed by the State as aforesaid upon the said Internal Improvement Act, in respect to the character, ownership and control of the statutory lien created thereunder, and in the acts and proceedings of the State by which it has settled with the railroad companies for the indebtedness, and released and discharged or transferred the statutory lien therefor, and particularly that after many of such settlements and discharges had taken place, and with full notice and knowledge thereof, not only have they respectively fully acquiesced in and assented to the same, but some of the said State bondholders, and especially the complainants, or some of them, have, in communications with the State officers or authorities, urged the making of further settlements between the State and the railroad companies, under and in pursuance of the said Acts of 1869 and 1870, and the discharge thereby of so much of the railroad companies' indebtedness to the State, and of the statutory mortgage lien therefor, upon terms of payment in any State bonds at par, which further settlements have accordingly been made and discharges of the lien given accordingly, and the complainants and the holders at the time being of the said bonds, which they now claim to own, and the holders of a great amount or proportion of the other Tennessee State bonds issued under said

Internal Improvement Act, with like full notice and knowledge as aforesaid, have, in other dealings with the State, and communications with the State officers and authorities, recognized and treated their said bonds as obligations of the State alone, and in no respect liabilities of the railroad companies nor liens upon their roads, and have accordingly entered into negotiations with the State for the settlement of such bonds and for the reduction and compromise and extension thereof, as being debts of the State alone and not of the railroad companies, and have in other ways, the particulars whereof these defendants have not as yet been able to discover, but which, when discovered, they crave leave to give in evidence, manifested acquiescence in and assent to the aforesaid practical construction placed by the State upon the said act, and the settlements and discharges of such debts and liens made and given by the State as aforesaid.

HUMES & POSTON,
JOSEPH B. HEISKELL,
C. F. SOUTHMAYD,
Solicitors and of Counsel for Defendants.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues on behalf of himself and other holders of Tennessee State Bonds issued to the Memphis and Charleston Railroad Company,

vs.

The Memphis and Charleston Railroad Company and the East Tennessee, Virginia and Georgia Railroad Company.

IN EQUITY.

Answer and Cross-Bill of William T. Walters, a citizen of Maryland, for himself and other holders of Bonds of the Memphis and Charleston Railroad Company.

MATTHEWS, RAMSEY AND MATTHEWS,
Solicitors.

STANLEY MATTHEWS,
Of Counsel.

The Answer of WILLIAM T. WALTERS, a citizen of the State of Maryland, on behalf of himself and others similarly situated and in like interest, being holder of Bonds of the Memphis & Charleston Railroad Company, to the Bill of Complaint of CALVIN AMORY STEVENS, Complainant, who sues in his own behalf and on behalf of all holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company,

against

The Memphis & Charleston Railroad Company and the East Tennessee, Virginia & Georgia Railroad Company, Defendants, in the United States Circuit Court for the Western District of Tennessee.

And now comes the said William T. Walters, a citizen of the State of Maryland, who appears voluntarily by leave of the Court, in his own name, and in his own behalf, and also on behalf of all others similarly situated, and in like interest, who may come in and be made parties hereto, reserving and saving all benefit, advantage, or exception, or otherwise, that can or may be had, or taken to the many errors, uncertainties, and imperfections in said bill contained, and answering thereto, or to so much thereof as this defendant is advised is necessary, says:

1. That this respondent hereby adopts the answer to said bill heretofore filed by his co-defendants, the Memphis & Charleston Railroad Company, and the East Tennessee, Virginia, and Georgia Railroad

Company, and all the matters and things therein set forth, as fully as if the same were here repeated, and affirms and declares the same, and each allegation and denial therein, to be true in substance and in fact, according to his information and belief, and relies upon the same as a complete and perfect answer and defense to said bill.

2. This respondent, further answering, says, that on on or about the 20th day of August, 1877, the Memphis and Charleston Railroad Company, a corporation duly created and organized by and under the laws of the respective States of Tennessee, Alabama, and Mississippi, party of the first part, and the Farmer's Loan and Trust Company, a corporation created by the laws of the State of New York, and located in the city of New York, party of the second part, entered into a certain indenture, in which it was recited as follows:

Whereas, the party of the first part now possesses, owns and is operating its main line of railroad, extending from Memphis, in the State of Tennessee, *via* Corinth, in the State of Mississippi, and Huntsville, in the State of Alabama, to Stevenson, in the said State of Alabama, a distance of two hundred and seventy-two miles, or thereabouts, together with the branch thereof in the State of Tennessee, known as the Somerville and Moscow branch, extending from Moscow, on the main line, to Somerville, a distance of about fourteen miles, and the branch thereof, in the State of Alabama, extending from Tuscumbia, on the main line, to Florence, a distance of about five miles, and also the Washington street branch, so called, extending from the Memphis and Charleston Railroad depot, in the city of Memphis, through Washington street and Center landing, to the Mississippi river a distance of about one mile; and also certain rights and

privileges for transportation of its passengers and freight, in its own cars, over the railroad running between Stevenson, in Alabama, and Chattanooga, in Tennessee, under and in virtue of a certain contract of June twenty-third, and July twenty-sixth, eighteen hundred and fifty-eight, made between the said The Memphis and Charleston Railroad Company and the Nashville and Chattanooga Railroad Company ; and the said party of the first part also owns and possesses the rolling stock or equipment and machinery for the operation of its said railroad and branches ; and also the depots and grounds and buildings and other appurtenances of and for the uses and purposes of its said railroad and branches, and other real estate situate upon and along the line of its road, and the other things hereinafter described and mortgaged.

And, whereas, all those parts of the said railroad, as well branch as main line, which are situate in the State of Tennessee, with the lands and premises thereunto appertaining, embracing all the real estate of the said party of the first part, situate in the State of Tennessee, with the improvements thereon, and the rolling stock or equipment, and other appurtenances thereof, are subject to a first and paramount statutory lien, in the nature of a mortgage originally created, and existing in favor of the State of Tennessee, for or in respect of the amount of certain Tennessee State bonds, loaned or advanced, or delivered to, or in aid of the said railroad company, by the State of Tennessee, under and in pursuance of the general improvement laws of that State, and for or in respect of the amount of principal and interest of which State bonds thus loaned, advanced, or delivered, the said The Memphis and Charleston Railroad Company became indebted to the State of Tennessee, and which indebtedness of said railroad company to said State, and the lien held by the said

State therefor, have been recently, with the consent and approbation of the said The Memphis and Charleston Railroad Company, and of its board of directors, duly assigned and transferred by said State to, and are now held and owned by Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the city of New York, in the like position and with the like rights to enforce the same, as the said State had, which assignment and transfer was made and effected under and in pursuance of the act of the legislature of the State of Tennessee, entitled "an act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1866, and the other laws of said State in that behalf, and the amount of such indebtedness of said party of the first part, and of the attendant lien therefor upon its said railroad and other property in the State of Tennessee, thus assigned to and now held by said Adrian Iselin and Adrian Iselin, Junior, including the interest accrued thereon to the first day of July eighteen hundred and seventy-seven, is seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and the principal thereof bears interest from said first day of July, eighteen hundred and seventy-seven, at the rate of six per cent. per annum.

And, whereas, there are now outstanding and unpaid, as debts of the said party of the first part, twelve hundred and ninety-three thousand dollars, in amount of the so-called first mortgage bonds of the said Memphis and Charleston Railroad Company, issued under and secured by said company's so-called first mortgage or deed of trust, dated May first, eighteen hundred and fifty-four, to James Punnett, G. B. Lamar, and Thomas Fearn, as trustees, covering the said railroad company's line of railroad, situated in the States of Alabama and

Mississippi respectively, with the appurtenances and equipments thereof, as a first mortgage lien thereon, and likewise covering the said railroad company's line of railroad in the State of Tennessee, with the appurtenances and equipment thereof, subject and subsequently to the prior and paramount lien and incumbrance thereon of the above-mentioned debt and lien originally existing in favor of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, Junior, the principal of the said so-called first mortgage bonds, for twelve hundred and ninety-three thousand dollars falling due and payable on the first day of May, eighteen hundred and eighty, and the said bonds in the meantime bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November.

And, whereas, there are also now outstanding and unpaid, as debts of the said party of the first part, one million dollars in amount of the so-called second mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said company's so-called second mortgage or deed of trust, dated January first, eighteen hundred and sixty-seven, to Gustavus L. Mastin, George W. Neal, and William C. Rehren, as trustees, covering the same premises as the said so-called first mortgage, but subject to the prior lien and incumbrance of such so-called first mortgage, and in like manner therewith subject, so far as respects the said line of railroad in the State of Tennessee, and the appurtenances and equipment thereof, to the prior and paramount lien and incumbrance thereon of the said debt and lien, originally existing in favor of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, Junior, as aforesaid, the principal of the said so-called second mortgage bonds for one million dollars, falling due and

payable on the first day of January, eighteen hundred and eighty-five, and the said bonds in the meantime bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July.

And, whereas, the said party of the first part is subject to certain further indebtedness, for the liquidation whereof it needs to make provision.

And, whereas, the said Adrian Iselin and Adrian Iselin, Junior, have expressed their willingness, in a certain manner, and upon certain conditions, to make a certain eventual deduction or discount from the full amount now due or owing to them upon the said indebtedness and lien, originally existing in favor of the State of Tennessee, which has been assigned to and is now held by them as aforesaid, provided the said railroad company will give to them such additional collateral security for such indebtedness upon the terms and conditions hereinafter mentioned in that behalf, and enter into and carry out such arrangements with them, in respect of the eventual liquidation and satisfaction of said indebtedness as are hereinafter stated.

And, whereas, in the exercise of the powers in that behalf possessed by it, under the laws of the respective States of Tennessee, Alabama, and Mississippi, in order to provide for further securing the payment of its aforesaid indebtedness, originally existing in favor of the State of Tennessee, assigned and transferred to, and now held by Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and also to make such provisions as is hereinafter contained or declared, for the eventual liquidation and satisfaction of that indebtedness, with the interest accruing and to accrue thereon, from and after the first day of July, eighteen hundred and seventy-seven, and likewise, in order to provide for taking up and discharging its above

mentioned now outstanding first mortgage bonds, so called, for twelve hundred and ninety-three thousand dollars, with the interest thereon; and its said second mortgage bonds, so called, for one million dollars, with the interest thereon; and its other now existing indebtedness, hereinbefore referred to; and thus to consolidate and arrange its debts, as by law it is entitled to do, and for other lawful uses and purposes of its business, and agreeably to the laws regulating it. The said The Memphis and Charleston Railroad Company, in accordance with resolutions of its shareholders and of its board of directors, at meetings of such shareholders and such board of directors, respectively, duly and regularly held, has caused to be prepared and made ready for execution, under its corporate seal, with the signatures of its president and treasurer, respectively, and for subsequent issue, negotiation, and use, as hereinafter provided, its certain so-called consolidated first mortgage bonds, for the aggregate amount of four million seven hundred thousand dollars of United States gold coin, consisting of four thousand seven hundred of such bonds, numbered consecutively from 1 (one) to 4,700 (four thousand seven hundred), both inclusive, bearing date respectively the twentieth day of August, eighteen hundred and seventy-seven, each of such bonds being for the payment, to the holder thereof, on the first day of January, nineteen hundred and fifteen, in the city of New York, of one thousand dollars in United States gold coin, and for the payment of interest thereon from the first day of July, eighteen hundred and seventy-seven, and in the meantime at the rate of seven per cent. per annum, in like gold coin, in the city of New York, semi-annually, on the first days of January and July in each year, on presentation and surrender of the coupons, or interest warrants for such interest, to such bond annexed, and in accord-

ance with resolutions, both of its shareholders and of its board of directors, at meetings of such shareholders and such board of directors, respectively, duly held, has determined to secure the payment of the principal and interest of such bonds, which shall be issued within the said aggregate limit of four million seven hundred thousand dollars, by this mortgage in the manner and to the effects hereinafter expressed.

The forms of which bonds and coupons, and trustees' certificate, was therein set forth. Thereupon said indenture witnesseth: That, in order to secure the due and punctual payment of the principal and interest mentioned in, and to become payable upon the above-mentioned bonds, within the said aggregate limit of four millions seven hundred thousand dollars, in United States gold coin, and of the coupons accompanying the same, according to the tenor and effect of such bonds and coupons respectively; and in consideration of the premises aforesaid, and of one dollar to the said party of the first part in hand paid by the said party of the second part, the receipt whereof was thereby acknowledged, the said The Memphis and Charleston Railroad Company, party of the first part, granted, bargained, sold, conveyed, assigned, transferred, and set over unto the said The Farmers' Loan and Trust Company, party of the second part, and to its successors and assigns forever, all and singular the main line of railroad of the said Memphis and Charleston Railroad Company, extending from the point of commencement thereof, in the city of Memphis, in the State of Tennessee, *via* Corinth, in the State of Mississippi, and Huntsville, in the State of Alabama, to the terminus thereof, in Stevenson, in the said State of Alabama, connecting there with the Nashville and Chattanooga Railroad, being a distance of two hundred and seventy-two miles, be the same

more or less, and also the branch of said railroad situate in the State of Tennessee, known as the Somerville and Moscow branch, extending from Moscow, on the main line, to Somerville, a distance of about fourteen miles, be the same more or less; and also the branch of said railroad situate in the State of Alabama, extending from Tuscumbia, on the main line, to Florence, a distance of about five miles, be the same more or less, and including the bridge across the Tennessee river, near Florence; and also the Washington street branch, so called, of said railroad, extending from the depot of said main line, in the city of Memphis, through Washington street and Center landing, to the Mississippi river, and the depot grounds and wharves on said river, and all the rights and privileges of said railroad company in respect of the uses of streets and wharves and levee on the Mississippi river; and also all and singular the rights of transportation of the passenger cars and freight cars of the said party of the first part on and over the railroad, between Stevenson, in Alabama, and Chattanooga, in Tennessee, which the party of the first part has or is entitled to claim under or in virtue of the contract of the date of June twenty-third and July twenty-sixth, eighteen hundred and fifty-eight, made between the Memphis and Charleston Railroad Company and the Nashville and Chattanooga Railroad Company, and all the rights and privileges whatsoever, for or in respect of the use of, or transportation over, the line of railroad between Stevenson and Chattanooga, now belonging to the Nashville, Chattanooga and St. Louis Railway Company, which the said party of the first part holds, or is in any wise entitled thereto, or can or could claim thereunder, or under and in virtue of the before mentioned contract of June and July, eighteen hundred and fifty-eight, or otherwise howsoever, to-

gether with all and singular the roadway or track of the aforesaid main line of railroad, extending from Memphis to Stevenson, as aforesaid, and of the said several branches respectively, and the superstructure, and the rails laid or to be laid thereon respectively, and all the appurtenances thereof, together with all and every incident thereto, more particularly described in said indenture, to have and to hold all and singular the said main line of railroad and branches respectively, with their appurtenances and rolling stock and equipments, present and future, and all other the premises, properties, rights, interest, and franchises, immunities and privileges aforesaid, subject to the said prior lien in favor of Adrian Iselin and Adrian Iselin, Junior, their representatives or assigns, as aforesaid, unto the said party of the second part, its successors and assigns forever, in trust for the equal *pro rata* use, benefit, and security of all the persons and corporations who shall become or be the owners or lawful holders of any of the said bonds, within the aggregate amount of four million seven hundred thousand dollars, intended to be hereby secured as aforesaid, without preference of any of the said bonds over any of the others, by reason of priority, or by reason of the time of issuing or negotiation thereof, but with such special rights, to the owners of the fourteen hundred of such bonds, numbered from one to fourteen hundred, inclusive, as are hereinafter in that behalf declared and provided for.

And it was therein further provided as follows:

"That the aforesaid bonds to the aggregate amount of four million seven hundred thousand dollars, designed to be issued under and secured by this indenture as aforesaid, fourteen hundred thousand dollars in amount thereof, being the fourteen hundred of such bonds for one thousand dollars each, numbered from one (1) to

fourteen hundred (1400) inclusive, are appropriated, designed and intended to be used and applied by the said party of the first part for the purpose and in the manner following: that is to say, the same are to be transferred and delivered by the said railroad company, party of the first part, to the said Adrian Iselin and Adrian Iselin, Jr., as an additional collateral security to them, and their representatives and assigns, for the aforesaid indebtedness of the said railroad company, originally existing in favor of the said State of Tennessee, and assigned and transferred to and now held by said Adrian Iselin and Adrian Iselin, Jr., as aforesaid, and now amounting, as aforesaid, to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, besides the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, under an arrangement and agreement between said railroad company, party of the first part hereto, and said Adrian Iselin, and Adrian Iselin, Jr., by which such transfer and delivery to them of the said fourteen hundred bonds is not in anywise to operate as a payment of or upon account of the said indebtedness held by them under transfer from the State of Tennessee, nor is the same to diminish, impair or affect the said prior and paramount lien for the amount of such indebtedness, and for the interest accrued and to accrue thereon upon the said portion of said railroad, situate in the State of Tennessee, with its appurtenances and equipment, and the other property in said State which originally existed in favor of the State of Tennessee, and is now held by said Adrian Iselin and Adrian Iselin, Jr., under transfer from said State as aforesaid; but that notwithstanding such transfer and delivery to said Adrian Iselin and Adrin Iselin, Jr., of said fourteen hun-

dred bonds, the said debt against said railroad company, now held by them under transfer from the State of Tennessee, and the lien thereof originally existing in favor of said State, and vested in them by transfer as aforesaid, and all the rights, and remedies and securities of said Adrian Iselin and Adrian Iselin, Jr., for the security of such indebtedness, originally existing in favor of the State, with the interest accrued and hereafter to accrue thereon, and for the enforcement of the lien thereof, are to remain in full force as if such fourteen bonds had not been transferred and delivered as additional security therefor as aforesaid.

Provided, however, that all sums of money which shall be actually paid by said railroad company on account of interest or principal upon such fourteen hundred bonds, or either of them, either to said Adrian Iselin and Adrian Iselin, Jr., or to any one holding any of such bonds, by or under transfer from them, are, when such payments respectively are actually made and realized in cash, and not before, to be credited as payments on account of the said original indebtedness to the State of Tennessee, assigned to Adrian Iselin and Adrian Iselin, Jr., as aforesaid, reckoning for the purpose of such credit such payments made in gold at the value thereof in United States legal tender currency, at the time of such payment; which payment received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, are to be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, Jr., as aforesaid, and which payments, if any, received for or on account of the principal of such fourteen hundred bonds, shall be applied on account of the principal of such indebtedness orig-

inally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven; and with the further provision in such arrangement that said Adrian Iselin and Adrian Iselin, Jr., shall be entitled to sell or otherwise dispose of and to transfer to any person or persons or corporations, any of the said fourteen hundred bonds so transferred and delivered to them as they may deem fit, without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their assigns in respect thereof and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of such bonds, so sold or disposed of or transferred, but subject to the aforesaid obligation to give credit on such indebtedness for all payments which shall be made for principal or interest on such bonds so sold or disposed of or transferred when such payments are actually made and realized in cash, but not before; and under the further understanding and arrangement that the said Adrian Iselin and Adrian Iselin, Jr., in anticipation of making sales or dispositions or transfers of such fourteen hundred bonds or portions thereof, shall be at liberty to assign and transfer the said original indebtedness of the railroad company to the State, and the State's lien therefor transferred to them as aforesaid, and all their present and future rights and remedies in respect thereof, to a trustee or trustees, to be held for the equal *pro rata* benefit of the holders, from time to time, of such fourteen hundred bonds, numbers one to fourteen hundred inclusive, and so as that proportionate beneficial or equitable interest in the said indebtedness, originally existing in favor of the State, including the interest thereon accrued

and hereafter to accrue, and in the lien which was held by the State therefor, and the rights and remedies, in respect thereof, may vest in equitable or beneficial interest in the holders, from time to time, of such fourteen hundred collateral bonds, numbers one to fourteen hundred inclusive, including the said Adrian Iselin and Adrian Iselin, Jr., themselves, in respect of so many of said fourteen hundred bonds as may remain in their hands untransferred and undisposed of by them, with *pro rata* equality, in proportion to the respective amounts held by such parties respectively of such fourteen hundred bonds, and so that the holder of each of such fourteen hundred bonds, numbers one to fourteen hundred inclusive, may be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the interest thereon accrued and to accrue, and the said liens and rights held for the security thereof corresponding with the principal and interest of such bonds so held by him, and with the proper proportionate addition thereto by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such original indebtedness, with its attendant liens and securities, shall remain in the said trustees, to whom the same shall be transferred by said Adrian Iselin and Adrian Iselin, Jr., in trust for the holders of said fourteen hundred collateral bonds, to the end and intent, that notwithstanding any sale, or other disposition or transfer, which may be made of such fourteen hundred collateral bonds, the said original debt and lien preserved in full force, and the said bonds held as further collateral security may, in substance and effect, be beneficially held by or for account of the same persons, and that the parties may substantially, in respect of beneficial or equitable interests,

be in like position as if the said original debt and lien and said collateral bonds had all continued to be held by said Adrian Iselin and Adrian Iselin, Jr., or had been altogether assigned over by them to the same person or persons.

And inasmuch as under such proposed arrangement, and in virtue of the terms and condition of this mortgage and the bonds thereby secured, there will exist a double lien and security for substantially the same amount or indebtedness in favor of the holders of said debt and lien, originally held by the State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and preserved and kept in force in the hands of the trustee, to whom the same is to be assigned as aforesaid, and of the holders of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, held as further collateral security therefor, and which double lien, as to a part thereof, will exist upon the same subject-matter, viz., the said railroad in Tennessee, with its appurtenances and equipment, and the other property in the State which is subject to the State lien, now it is hereby declared, provided, granted, and agreed that such double lien and security, is intended to, and shall exist, and that neither lien nor security shall prejudice the efficacy of the other ; that the said State lien, held by assignment as aforesaid, may be enforced, and all rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in favor of the holders of such fourteen hundred bonds as further collateral security, as aforesaid, did not exist, and that the holders, from time to time, of such fourteen hundred bonds, so transferred by way of further collateral security for such original debt, shall be entitled, as fully and completely and effectually as if the said original lien and secur-

ity for the original debt, as further security for which said fourteen hundred bonds are transferred, did not exist to their equal *pro rata* share and proportion, in like manner with the holders of the other bonds, numbers (1401) fourteen hundred and one to (4700) four thousand seven hundred inclusive, to be issued under and secured by this mortgage, or such of such other bonds as may, from time to time be outstanding, of the benefit of all the securities and liens provided by this mortgage, and of the proceeds and fruits thereof, and of any foreclosure or enforcement of the same, including as well as the mortgaged premises situate in Alabama and Mississippi as the other mortgaged premises, save and except that if, prior to making apportionment and distribution between the holders of the bonds secured by this indenture of mortgage of the net proceeds of any foreclosure or other legal enforcement thereof, any net sum shall have been actually collected and realized in cash by means of legal enforcement of the said lien originally held by the State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, by giving proper credit therefor, after first deducting therefrom all proper expenses and charges incurred in respect of the proceedings for such enforcement and collection, including the compensation of the said trustee, to whom the same shall be so assigned by said Adrian Iselin and Adrian Iselin, Junior, in respect thereof, the then unpaid amount of the said indebtedness of the railroad company originally existing in favor of the State and by it transferred over as aforesaid, and as collateral security, for which said fourteen huudred bonds, numbers one to fourteen hundred inclusive, shall be held as aforesaid, shall be reduced below the principal of such fourteen hundred bonds, and the interest thereon accrued and unpaid at the time of such apportion-

ment and distribution, having due regard to the circumstances that said bonds are payable in gold, and therefore, reducing the amount of such net credits or deductions to the value thereof in gold when collected and realized, then, and in such case, for the purpose of making such apportionment and distribution between the respective bondholders and secured by this indenture of mortgage of the net proceeds of such foreclosure or other legal enforcement of this mortgage, the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, instead of being reckoned at their face value, with their accrued and unpaid interest, shall be reckoned as being only for an amount equal to such reduced amount, computed as aforesaid, remaining unpaid at the time of such apportionment and distribution upon the said indebtedness of said railroad company originally existing in favor of the State of Tennessee, and by it transferred over as aforesaid, and for which the said fourteen hundred bonds shall stand as security as aforesaid, and such apportionment and distribution between said fourteen hundred bonds and the other then outstanding bonds hereby secured shall be made accordingly; and it being always understood, agreed, and provided that the double lien and security as aforesaid, will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction of the same substantial debt, but that all payments actually received and realized in money by means of either security, will and shall, to the extent of such actual payment realized, go in reduction of said original debt, and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

And it is further declared and understood that it will be made a part of said arrangement between

said railroad company and said Adrian Iselin and Adrian Iselin, Junior; that said Adrian Iselin and Adrian Iselin, Junior, shall consent so far to reduce the amount of their said claim and demand against said railroad company and the lien and security thereof, under the said assignment and transfer from the State of Tennessee to them, as that, when they or their assigns shall have actually received and realized in cash, by net payments, as on account of the principal of the said indebtedness of seventeen hundred ond thirty-six thousand nine hundred and six dollars and twety-five cents, in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars in United States gold coin, reducing currency realizations or payments to gold values as aforesaid, and shall likewise have actually received and realized in cash, by net payments, as on account of interest accruing at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, a sum equal to seven per cent. per annum in the United States gold coin, from the first day of July, eighteen hundred and seventy-seven, payable semi-annually on the first days of January and July, upon such sum of fourteen hundred thousand dollars gold, until payment and realization in cash, as aforesaid, of that principal sum, reducing currency realizations or payments to gold values as aforesaid, the residue of such currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and of the interest accruing thereon, from and after July first, eighteen hundred and seventy-seven, shall be thereupon given up, released, and discharged to the said

railroad company; provided, however, as a condition thereof, that said railroad company shall bear, pay, and discharge all the expenses and charges attendant upon the collection and receipt of such moneys on account of the principal or interest or either of such indebtedness originally existing in favor of the State, and of all legal and other proceedings had or taken for the recovery thereof, including the compensation of such trustee in respect of such collection, receipt, and legal and other proceedings; and that this stipulation and agreement shall bind the representatives and assigns of said Adrian Iselin and Adrian Iselin, Junior, including the trustee to whom such original debt and lien is to be so assigned, and that for the purposes thereof, all cash payments received and realized for principal or interest upon such fourteen hundred bonds, numbers one to fourteen hundred inclusive, or any of them, by parties holding such bonds under transfer from said Adrian Iselin and Adrian Iselin, Junior, shall be of like legal effect as if such moneys were received by said Adrian Iselin and Adrian Iselin, Junior,

This respondent further says that said indenture, deed of trust, or mortgage was duly executed and delivered by the said The Memphis and Charleston Railroad Company, and duly registered, according to the laws of Tennessee, Mississippi, and Albama, and, in accordance therewith, became, and was and is, a full and effectual conveyance of the premises therein described, for the uses and purposes therein mentioned, and that a copy thereof is hereto attached, marked "Exhibit No. 1," and is made a part hereof, and to which reference is hereby made.

3. This respondent, further answering, says that, in pursuance of the provisions of said indenture, the said The Memphis and Charleston Railroad Company and the Farmers' Loan and Trust Com-

pany, on the twenty-first day of August, eighteen hundred and seventy-seven, entered into another and further indenture, known as a "tripartite agreement," with Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the city of New York, parties of the first part thereto, the said Farmers' Loan and Trust Company being the party of the second part, the Memphis and Charleston Railroad Company the party of the third part, whereby the right and title of the said Adrian Iselin and Adrian Iselin, Junior, in and to the said debt theretofore owing by the said The Memphis and Charleston Railroad Company to the State of Tennessee, on account of the loan of its bonds to said railroad company, and the lien therefor, reserved to the State by the said internal improvement laws, which the said State of Tennessee had theretofore transferred and sold to the said Adrian Iselin and Adrian Iselin, Junior, in pursuance of the sixth and seventh sections of the act of the legislature of said State, entitled an act to liquidate the State debt, contracted in aid of railroad companies in the State of Tennessee, passed February 25, 1869, and other laws of said State in that behalf, as appears by the certificate of the governor and secretary of state of Tennessee, a copy of which is recited and set out in said indenture or tripartite agreement, dated July twenty-fifth, eighteen hundred and seventy-seven, the said Adrian Iselin and Adrian Iselin, Junior, having made the payments to the State of Tennessee, therein stated and declared, as required by law, were transferred to the said The Farmers' Loan and Trust Company, in trust, for the uses and purposes therein specified. A copy of said indenture or tripartite agreement is hereto attached, as a part hereof, and marked "Exhibit No. 2,"

4. This respondent, further answering, says that the recitals contained in the said indenture or tripartite agreement aforesaid are true, and that this respondent is the owner and holder of eighty of the said bonds of the Memphis and Charleston Railroad Company for one thousand dollars each, with the coupons thereto attached, referred to in said indenture or tripartite agreement, and also in the said deed of trust and mortgage of the twentieth of August, eighteen hundred and seventy-seven, from the Memphis and Charleston Railroad Company to the said Farmers' Loan and Trust Company, and are a part of the first fourteen hundred thereof, in number being numbered from twelve hundred and forty-one (1,241) to thirteen hundred and twenty (1,320), inclusive; this respondent having purchased the same in good faith, and for full value, and in reliance upon the acts and facts mentioned and recited in the said two indentures hereinbefore referred to and set out. And this respondent claims, by virtue thereof, that in respect to the said bonds he is entitled to the protection and benefit of the security of the said lien upon the said railroad and other property originally reserved by the State of Tennessee, under the State internal improvement laws of eighteen hundred and fifty-two, and the supplements and amendments thereto; which said lien was transferred by the State of Tennessee to said Adrian Iselin and Adrian Iselin, Junior, as in said indenture appears, and by them to the said Farmers' Loan and Trust Company, in trust for the benefit and security of this respondent, holder of said bonds, and of all others similarly situated, and in like interest holding any of the said bonds of the Memphis and Charleston Railroad Company, numbered one to fourteen hundred, as in said indenture and deed of trust mentioned, according to the terms, conditions and provisions therein contained,

any thing in the bill of complaint of the complainant to the contrary notwithstanding.

5. This respondent admits that the General Assembly of the State of Tennessee, on the 11th of February, 1852, passed an act, entitled "an act to establish a system of internal improvements in this State," and various other statutes amendatory and supplementary thereto and in execution thereof, but does not admit that the copies thereof set out in the bill are correct, or that those referred to therein are all that are material to be considered, and denies that the construction thereof claimed by the complainants in said bill is the true and rightful interpretation thereof, and particularly that the same created any debt or obligation from any railroad company, to which they were loaned to the holders of any bonds of the State of Tennessee, loaned to said company by the State, and sold and put in circulation by said company, or that the lien reserved and declared in said laws was reserved and declared in favor of the holders of the bonds of the State, or in anywise inured to them, either by the terms of the said statutes, or in virtue of any agreement or contract with the holders of said State bonds, expressed or implied, made by and between them and said railroad company or the State of Tennessee, or otherwise; and on the contrary thereof, these respondents insist that the said statutes, according to the true meaning thereof, are laws of the State of Tennessee, defining, declaring, and regulating the duties and obligations toward said State alone, of the several railroad companies, to each of which it loaned its bonds, for the uses and purposes therein named, and reserving and securing to the said State, and to it alone, its rights and interests, as against said railroad companies, in consequence of the loan to each thereof of any of its own, bonds;

and that the only contract to which the holders of the bonds of the State of Tennessee are parties, or in which they have any legal or equitable or beneficial interest, is directly with the State, and is contained only in the bonds themselves, whereby they agreed for the payment of the interest and principal, as therein stipulated, to look alone to the faith and credit of the State, thereby pledged for the same.

And this respondent further says, as a matter of fact, that all bonds of the State of Tennessee loaned to the said railroad companies under said acts, were sold in the market as straight Tennessee State bonds; that is to say, as other bonds of the State of Tennessee, issued upon the mere credit of the State, and without other security, and on which the State was liable as principal, and as distinguished from bonds of railroad companies, indorsed or guaranteed by the State, and on which both the railroad company and the State were bound, the former as principal, the latter as surety; and the respondent says that, in consequence of this difference, and in virtue of said bonds being what was known in the market by the public as straight Tennessee bonds, the said bonds sold before the war, commanded a premium in the market, and were sold at or above par, while bonds of other descriptions, on which the railroad companies were bound as principals and the State of Tennessee as surety, and secured by a mortgage lien upon the railroad property, directly to the holders of the same, could not be sold except at a very considerable discount; and this respondent insists that it was to meet this condition of the market, which was well known, and to avoid and prevent the loss occasioned by this distrust of bonds, on which railroad companies were bound as principals, and the State merely as surety, that the legislation introduced by the acts of January 15 and February

11, 1852, was shaped so that the bonds of the State to be issued under it should rest alone, without other security, upon the public confidence in the ability and willingness of the people and government of the State of Tennessee to meet and pay at maturity all their obligations and debts, as, at that time, they always had done, and as at that time it was believed they always would continue to do; and all the provisions in said legislation looking to security for the payments to be made by the railroad companies were arrangements to which the State and the railroad companies alone were parties, and for the sole indemnity of the State against loss on account of its liability for this interest and principal of its own bonds, issued and loaned to the said several companies.

And this respondent says that it was not in the contemplation of the parties at the time of the passage of said internal improvement acts of 1851, 1852, nor at the several times when the bonds of the State were issued, in pursuance thereof, to the several railroad companies mentioned therein, nor when any of said bonds were sold by said railroad companies, that the State of Tennessee would ever fail promptly and punctually to pay the current interest on said bonds; and that, consequently, it is inadmissible now to construe said acts as if they contained provisions looking to such contingency, and providing against it, more especially as if such construction had been put on said laws at the time of said negotiation, it would have been evidence of such distrust in the good faith or ability of the State to meet its obligations as would materially have affected the market value of said bonds, if not prevented their sale; and, on the contrary thereof, this respondent says that so little room was there for such a construction of these acts, that express provision was therein made, in the 5th section of the

Act of February 11, 1852, whereby it was made the duty of the comptroller, and he was thereby authorized, "upon his warrant, to draw from the treasury any sum of money necessary to meet the interest on snch bonds, as may not be provided for by the company, as provided for in this act; and the comptroller shall report thereof to the General Assembly from time to time."

And this respondent further says that whatever were or may be supposed to have been the rights of the holders of the State bonds, issued under said Act of February 11, 1852, after sale thereof by the railroad companies, to which they had been loaned and issued, they were taken subject to the provisions of the 12th section of said act, whereby it was enacted "that the State of Tennessee expressly reserves the right to enact, by the legislature, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to insure the State against any loss, in consequence of the issuance of bonds under the provisions of this act, but in such manner as not to impair the vested rights of the stockholders of the companies."

And that all the subsequent acts, amendatory of said act of February 11, 1852, and supplementary thereto, particularly the said acts of 1869, 1870, for the retirement of the State debt, and for the sale of delinquent railroads, and all acts and transactions under them, whereby settlements were effected between the State and said several railroad companies, and the indebtedness of the latter, arising in consequence of the loan to them of the bonds of the State, was liquidated and satisfied, and the lien to secure the same discharged, were strictly and fairly in execution of the intentions and purposes of the original act, and of the power reserved to the State in the 12th section thereof.

And this respondent further says that said act of February 11, 1852, not only recognizes the lien thereby reserved and created, as belonging to the State in law, but also in equity, for its own sole and exclusive benefit, to be dealt with, enforced, or discharged, according to its own discretion, and with a view only to its own interests, as its own property, security and indemnity; and also that the plan provided in said act for the gradual but ultimate payment and extinction of the obligations of the railroad companies under the same, in making provisions for a sinking fund, according to the terms of the 7th section thereof, explicitly admitted the principle of a payment by said railroad companies, on account thereof, of any bonds of the State, whether the identical ones issued to the company or not, and guaranteed to each of said railroad companies, as a right, the opportunity to pay its whole indebtedness, arising under said act, in any bonds of the State of which it might become possessed, and was merely a provision for effectuating the just and lawful exchange of one debt for another, upon the basis of mutual rights of set-off.

6. This respondent further says that immediately after the proclamation of peace, in the spring of 1865, the General Assembly of the State of Tennessee, then in session, addressed itself to the subject of the condition of the railroads of the State, and of the public debt. The Louisville and Nashville Railroad Company was, at that time, the strongest corporation, financially, owning or operating any railroad in Tennessee, for the reasons, that the principal part of its lines were situated in the State of Kentucky, and had suffered less than Tennessee roads from injury inflicted by reason of military operations. Accordingly, the first step taken was to seek a settlement with that company for the liquidation and payment of its indebtedness to the

State, on account of bonds issued to it to aid in the construction of its main stem from the State line to Nashville.

This respondent says that the discharge and satisfaction of the debt, due from the Louisville and Nashville Railroad Company to the State of Tennessee, and a lien reserved under said statutes for the security of the same, was effected in the manner following; to wit: On May 5, 1865, the General Assembly of the State, by joint resolution, appointed the comptroller, secretary of State, attorney-general and commissioner of public works, a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the governor was authorized to have instituted such legal proceedings as might be nccessary to protect the interests of the State. On the 18th of November, 1865, said commissioners reported to the legislature that they had effected a settlement; that the bonds loaned said company by the State amounted to $560,500, and the overdue interest thereon to $147,131.25; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State, and the interest in coupon bonds of the State then due. The commissioners say: "Believing it to be manifestly for the interest of the State to call in this large instalment of its indebtedness, and believing, moreover, that the company had a right under the law regulating the sinking fund to pay off its entire indebtedness of the bonds of the State, your commissioners accepted the proposal, and executed to the company a receipt dated November 17, 1865, for $707,631.25 in bonds and coupons of the State, being the total indebtedness of said company to the State of Tennessee on account of the bonds of the State received in aid of the construction of said road and the bridge

across the Cumberland river." Copies of said resolution and report are herewith filed as Exhibits Nos. 3 and 4 respectively. And these respondents say that the said railroad company actually paid and delivered said bonds and coupons as in said receipt is cited.

7. This respondent further says, that the facts of this settlement were public and notorious, and were well known at the time to the public at large, to the holders of Tennessee State bonds, and, as these respondents aver and charge, to the complainant and those with whom they are associated and acting in the prosecution of this and similar suits; and that it was equally well known that it was made under a claim of right, and in pursuance of an interpretation of the Statutes of 1851, 1852, and of the subsequent legislation, which treated the lien upon the railroads reserved thereby as belonging to the State, not in trust for the holders of its bonds, but in its own right, to be dealt with in its own discretion, and with sole regard to its own interest; and that consequently, although at the time this settlement was made in 1865, the State was in default for nonpayment of the interest on its bonds from July, 1861, no protest or complaint was ever made by any holder of State bonds against the mode of dealing on its part with the said roads, nor against this settlement with the Louisville and Naahville Railroad Company, until the filing of this bill.

8. This respondent further says, that the bonds and coupons paid by the Louisville and Nashville Railroad Company to the State of Tennessee in the said settlement, were not the identical bonds and coupons originally advanced and loaned to said company, and by it negotiated and sold, but that the same, in part at least, were other bonds and coupons of the State of Tennessee, of like character thereto; that by the terms of the seventh section of

the act of February 11, 1852, the said company was required, at the end of five years after completion of its road, to set apart one per centum per annum upon the amount of bonds issued to it, and use the same in the purchase of any bonds of the State of Tennessee, paying said bonds so purchased into the treasury of the State after assigning them to the Governor, taking his receipt therefor, and which bonds, it was thereby declared, so paid in, as between the State and said company, should be a credit on the bonds issued to the company; and said bonds so paid in, and the interest accruing thereon from time to time, should be held and used by the State as a sinking fund for the payment of the bonds issued to the company, but that should said company repurchase any of the bonds issued to it under the provisions of said act, they should be a credit as aforesaid and canceled; and thereby, as this respondent insists, there accrued to the company, in addition to the obligation to pay said one per cent. per annum, the right at its election, with the concurrence and consent of the State, to pay any additional amount of bonds of the State, of any description, into said sinking fund with like effect.

And this respondent further says, that by an act of the General Assembly of the State of Tennessee, passed March 20, 1860, entitled "an act to provide for the equalization and investment of the sinking fund in the bonds issued to or indorsed for railroads in this State," it was provided that the money or bonds paid in to the sinking fund by the 1st day of January, 1860, with the interest thereon, should be passed directly to the credit of the parties having so paid the same, and be a release to said party for that amount of the debt due by them to the State of Tennessee, all bonds so paid in being canceled; and that after said date of January 1, 1860, the

companies who had received State bonds, should be required to pay two and one-half per centum per annum on the amount of such bonds, as a sinking fund, which amount might, at the election of the companies, be paid in cash, or in the like character of bonds that might have been issued to them respectively; if paid in cash, the same to be invested immediately in bonds of the State, to be canceled, and to be of the same character as those issued to the said company making the payment; and it was further provided therein, that the sinking fund when paid in all cases, shall be passed directly to the credit of the said company or corporation, and be a release to said company or corporation from that amount due by them to the State, and that, thereafter, each railroad company should provide the interest semi-annually as therein provided by law, on the amount of bonds unpaid at the time said interest falls due, and not on the original amount issued to said company by the State, as theretofore provided: and thereby there was recognized in said companies the right to pay, in manner aforesaid; in any bonds of the State, the entire amount due from it to the State on account of bonds originally issued to it by the State; and it was in the exercise of this right, that the Louisville and Nashville Railroad Company made its payment as aforesaid, which was accepted by the State in satisfaction of the debt due from it to the State, on account of the bonds issued to it, and in discharge of the lien reserved by the State as its security therefor.

9. This respondent further says, that, at the time said settlement was made, the circumstances of the situation were such as to make it most advantageous to the State of Tennessee, and beneficial to its credit and creditors. The war had but recently prior thereto definitely closed. During the period of actual military operations, the railroads had been the

prize of contending armies, as instruments of offense and defense. In the course of the struggle, they had been stripped of their equipment, and parts of them destroyed and repaired, as circumstances permitted, to fit them for military use, but so that when they were finally restored, on or about August, 1865, to their owners, they were destitute of rolling stock, cars, machinery, shops, and tools, and almost every thing needed for an equipment, nearly every thing of that description then in actual use upon the roads being the property of the United States, furnished and employed for its military uses. This they were permitted to purchase and did so in pursuance of executive orders issued by the President of the United States in September and October of that year, but being unable to pay cash, gave their obligations for the purchase-money payable in installments and bearing interest. The roads themselves, their road beds, tracks, trestle-works, bridges, and permanent works of every description, were, to a greater or less extent, out of repair, in need of restoration, in some instances in a state of actual dilapidation. Business of every kind had been suspended by the war, except military transportation, and now that employment ceased with the cessation of hostilities, but the fruits of peace, in the revival of industry and trade, could only come with the lapse of time, and the gradual accommodation of the community to the new order of things. The general result was that the railroads required large sums of money to put them in a condition to earn an income, and, after that, would have to wait the slow operation of general causes upon the social condition of the people, before any revival of trade would renew their sources of revenue. In the meantime, a large arrearage of debt, for unpaid interest, had accumulated by reason of the default, during the whole period from

July, 1861, both of the State and the railroad companies, in consequence of which the State securities had been discredited in the markets of the world, and their holders, as seen by the quotations in the stock markets at New York, were willing to dispose of them at a large discount. To buy them from those willing to sell, at their own offers, was no injustice to the bondholders; to pay them into the sinking fund, as a credit on the railroad debt, would be a relief to the companies, and would diminish the burden of the State, and reduce the amount of its obligations, so as probably to bring the State debt within limits which would make it tolerable, and so diminish the motive and temptation to repudiate it, while the demand thus created for depreciated securities would naturally, as in fact it did, raise the prices in the market of those held by others who did not choose to sell; so that the transaction was well calculated, without injury or loss to any one, to prove beneficial to all the important public and private interests affected.

10. This respondent further says, that about the time said settlement was made with the Louisville and Nashville Railroad Company, on November 8, 1875, the General Assembly of the State of Tennessee, by joint resolution of that date, appointed a joint committee to examine into the condition of the Sinking Fund, and ascertain what railroads had paid, and what amount, and if they had due credit, and also that they be authorized to cancel all bonds of the State that had been paid in by railroads; and these respondents say, that while they are ignorant of the exact amount of State bonds that, at that time, had been paid in on account of the sinking fund by the railroads, and for which they were entitled to credit on account of their indebtedness to the State for its bonds loaned to them under the general internal improvement acts, yet, that it

amounted to a considerable sum, and that said bonds had been paid in, as by law the railroad companies had the right to do, whether they were the identical bonds loaned to the company paying them into the State treasury, or other State bonds, issued to other railroads, or for the general purposes of the State; and these respondents say, that no other mode of reducing the indebtedness of the State to its bondholders, or of the railroad companies to the State, was in fact practicable, for the reason that no difference was made in the stock market in Tennessee State bonds, as to price or description, on account of having been issued to one railroad company and not another, or between those issued to railroad companies under the internal improvement acts, and those issued by the State for other purposes; nor could any purchaser or seller of bonds have knowledge, without carefully tracing their numbers in the books of the Secretary of State, on what account and to whom they were originally issued, so that no railroad company could practically go into the market and purchase exclusively State bonds which had been originally loaned to it, under the internal improvement acts, and it was a fact and practice well known to the complainants, as to all the holders of the State bonds, that they were from time to time bought in the market for the purpose, and actually paid into the sinking fund, without discrimination, as stated hereinbefore, accepted by the State as a payment on account of the debt due from the railroad company so paying them into the treasury, and credited to it in account, and treated, as between such company and the State, as paid and canceled bonds.

11. This respondent further says that, at or about the date of said settlement between the Louisville and Nashville Railroad Company and the State of Tennessee, to wit, on the 23d day of November,

1865, the General Assembly of said State passed an act to amend an act entitled "an act to establish a system of internal improvement in the State," passed the 11th of February, 1852, whereby the governor of the State was authorized and instructed to issue the six per cent. coupon bonds of the State, similar in character in every respect to the bonds issued under said act of 1852, and maturing at the same time, to an amount sufficient to pay off all the bonds and interest past due, as well as that to fall due January 1, 1866, or on any bonds that might fall due during the year 1867, issued or indorsed by the State prior to the 6th day of May, 1861, said bonds to be dated on the 1st day of January, 1866, and payable on the 1st day of January, 1892, to be sold and negotiated at not less than par or exchanged for the interest coupon bonds thereby provided to be paid, estimating each at their par value. And it was further provided in said act, that the State should have the liens upon each of the roads, their franchises, and property, for the prompt and faithful payment of the principal and interest of the bonds thereby authorized to be issued, to pay the interest on the bonds said company should have paid interest on as it had under the said act of February 11, 1852, for the bonds issued under that law; and the said several railroad companies receiving aid under this act should pay the interest on said bonds, as it matured, in the same manner and under the same rules, regulations, and restrictions as they were then required to pay on the bonds issued or indorsed for them under the said act of February 11, 1852, commencing the payment of said interest on the 15th day of June, 1866, the amount of interest due on January 1, 1866, by any railroad company to the State on bonds issued to or indorsed for said company, being charged up to said company on the same terms and conditions of the original loan under the said act of February 11, 1852.

It was further provided by the said act of November 23, 1865, that the obligation on the part of the railroad companies to pay into the sinking fund two and one-half per cent. per annum on the amount of their indebtedness to the State, be suspended until January 1, 1867, and said companies relieved from the payment of sinking fund then past due, and that during the year 1867, each of said companies should be required to pay four per cent. on the amount of its indebtedness to the State, to be paid in any bonds of the State of a like character to those issued or indorsed for said company, with the coupons on the same that have not matured, semi-annually on the first of April and October, and a like amount every year thereafter until the whole of their indebtedness is discharged.

And this respondent says that every holder of bonds of the State of Tennessee, originally issued under the internal improvement laws, including the complainant, if at that time he was holder of any such, accepted the provisions of this act of November 23, 1865, surrendering to the State the overdue and unpaid coupons of said bonds, which had matured from July 1, 1861, to January 1, 1866, and receiving in exchange therefor the said State bonds, authorized thereby, and subject to all the terms and conditions of said act, affecting either said new bonds or the original bonds held by them, and thereby admitted and consented to the expressed right reserved to the railroad companies to pay their indebtedness to the State, on account of said bonds originally loaned to them, in any bonds of the State of like character.

12. This respondent further says, that after the proceedings and legislation of the State of Tennessee, hereinbefore set out, including said settlement with the Louisville and Nashville Railroad Company of November 17, 1865, and the passage of

said Act of November 23, 1865, the market price of the bonds of the State of Tennessee, in the city of New York, rose from about fifty cents on the dollar in the month of March in that year to ninety-two cents on the dollar in the month of December in the same year.

13. This respondent further says, that at its same session, on the 18th day of January, 1866, the General Assembly of the State of Tennessee passed another Act to amend the said Act of February 11, 1852, wherein it is recited that the Memphis and Ohio Railroad, the Memphis, Clarksville and Louisville Railroad, the Edgefield and Kentucky Railroad, the Manchester and McMinnville Railroad, the Nashville and Northwestern Railroad, the Mississippi and Tennessee Railroad, the East Tennessee and Virginia Railroad, the Knoxville and Kentucky Railroad, the Winchester and Alabama Railroad, and the East Tennessee and Georgia Railroad were all out of repair, the bridges and trestles on said roads had been destroyed, and the companies were unable to put them in running order, and the State had a large interest in said roads, and it was to the interest of the State and the people of the State that the said roads should remain under their control, and that they should be put in running order. It was, therefore, thereby enacted that the governor of the State be authorized and instructed to issue the bonds of the State, bearing six per cent. interest, with coupons attached, similar in every respect to the bonds issued under the Act intended to be amended, viz.: the Act of February 11, 1852, and maturing as thereinafter provided, to the said named railroad companies, or receivers of such roads, appointed by the governor under the laws of the State, in the amounts therein named, amounting in the aggregate to the sum of $3,283,000, besides $125,000 to the Nashville and Chat-

tanooga Railroad Company, for the completion of the branch road from Bridgeport, Alabama to Jasper, Tennessee, and $75,000 to the Southern Central Railroad, for the purpose of assisting in paying for their bridge.

And it was further provided in said Act, that each of the said railroad companies to which relief was granted by said Act, should pay to the Treasurer of the State, as a Sinking Fund, four per cent. on the amount of its indebtedness under said Act, as also the interest on said bonds; the Sinking Fund to commence on the first of January, 1867, as a fund for the payment of said bonds; and the State thereby reserved a lien on all the profits of said roads, for the money thereby advanced for the repairing of the same, which the State should have the right to enforce, if the said companies should fail to pay the four per cent. and interest as provided by the said Act, and which should be enforced as provided by law, in the Internal Improvement Act of the State; and said lien, thus reserved was thereby also declared to be cumulative of, and in addition to, the lien declared in the Act of 1852, which said Act it was intended to amend, which lien—that is, under said last mentioned Act—was thereby declared to extend to, and cover, the money or bonds to be advanced to said roads under said Act.

14. This respondent further says, that in pursuance of the same policy, to extend and enlarge the aid of the State to its railroads, in order to restore and repair them, the General Assembly of the State passed additional acts, to which reference is here made, viz:

An act to incorporate the Tennessee and Pacific Railroad Company, and for other purposes, passed May 24, 1866.

An act to amend an act, passed January 18, 1866,

entitled, "An act to establish a system of internal improvements," passed February 11, 1852.

Under which two acts, bonds of the State were directed to be loaned to the amount of three millions and ten thousand dollars ($3,010,000), to the railroad companies therein named, upon the same conditions prescribed in the Internal Improvement Act of 1852 and its amendments.

And by an act, passed February 18, 1867, the act of November 23, 1865, above referred to, was amended so as to postpone the commencement of the payment by the railroad companies, of the four per cent. sinking fund, from the year 1867 until the year 1870.

15. This respondent further says, that many of the railroad companies were unable to provide the means to meet the interest falling due on the 1st of July, 1867, which by law they were bound to provide, and failed to do so, to the extent of nearly $800,000, but that the State nevertheless paid the whole amount of interest falling due on that date on its bonds to the holders thereof; and thereafter, on the 7th day of December, 1867, the General Assembly passed an act entitled "an act to amend the internal improvement laws of the State, passed February 11, 1852," and thereby authorized the loan in a like manner and under the same conditions imposed by the internal improvement laws of the State, to the several railroad companies therein named, of State bonds, to the aggregate amount of three million seven hundred thousand dollars ($3,700,000), besides an additional sum of $5,000 per mile to the Tennessee and Pacific Railroad Company; and by section 15 of said act it was "Provided, that if the several railroad companies or either of them to whom the bonds of the State have been loaned by this act or former acts, shall fail for two consecutive years, to pay the interest

that may accrue upon the bonds loaned to them severally, then, and in that case, the Governor, Secretary of State, and Comptroller may, at their discretion, sell said railroad track, railing, rolling stock, etc., upon such terms and conditions as they may deem best to secure the interest of the State, and shall retain of the proceeds of said sale, the amounts loaned to said companies and the interest due on the same, with expenses of said sale," and also, on the 26th of January, 1869, passed an act to amend the internal improvement act of 1852, by making it the duty of each railroad company, to whom had been issued the bonds of the State, at least fifteen days before the interest becomes due, from time to time, to pay the amount of such interest, including exchange and necessary commissions to the Comptroller of the State, instead of the Bank of Tennessee, as originally provided in the acts of 1851-1852.

16. This respondent further says, that on February 24, 1870, the General Assembly of Tennessee passed an act to fund the floating debt of the State, and thereby made provision for funding the interest on the public debt of the State, then due, and which might become due on or before the first day of January, 1874, in new bonds of the State, with coupons attached, redeemable by the State, in not less than five nor more than twenty years at the pleasure of the State, bearing interest at the rate of six per cent. payable semi-annually; and it was thereby also enacted that the amount of interest then due, or that might become due by the 1st day of January, 1872, to the State on bonds issued to railroad companies, might be paid by said railroad companies in the bonds of the State or past due coupons, as the said companies might elect, and the comptroller of the State was authorized and instructed to receive said bonds

or coupons in payment of the said interest due to the State by said railroad companies, provided, that no railroad company in the State should be entitled to the provisions of that section, unless they had paid or should pay, in cash, fifty per cent. of the amount due and owing to the State by such railroad companies on the first day of July, 1869.

And this respondent says that on March 17, 1873, the General Assembly of Tennessee passed an act entitled "an act to fund the past due bonds and coupons of the State, and to sustain the credit thereof," and thereby enacted that all the outstanding legally issued bonds of the State of Tennessee, due, or to become due before the first day of January, 1874, as well as all past due coupons, and coupons maturing on or before the first day of January, 1874, might be funded in six per cent. coupon bonds of the State of Tennessee, to be styled "the new series of funding bonds," redeemable, at the option of the State, after July 1, 1884, and due and payable on the first of July, 1914, and bearing six per cent. interest, evidenced by coupons attached, payable semi-annually, on the first days of January and July in each and every year, from and including the first day of July, 1874, to the maturity of the bonds; and it was thereby further enacted, that the faith, honor, and credit of the State of Tennessee was thereby pledged for the payment of said bonds at maturity, and providing a sinking fund for that purpose, and for the prompt payment of interest on said bonds, as well as the interest on the registered bonds thereinafter provided for, commencing with the interest to fall due the first day of July, 1874; and it was thereby made the duty of the treasurer of the State to set apart for that exclusive purpose so much of the revenues as might be necessary to pay the interest on said bonds, commencing with the interest that falls due the first

day of July, 1874; and, by the ninth section of said act, it was further enacted, that no coupons of bonds then due should be paid, other than those coupons falling due on and after the first day of July, 1874, and only such coupons of said bonds maturing after that time as should be presented to the comptroller, who was required to examine the same, and if found to have been issued according to law, should be registered, and the registration properly indicated thereon by him and the Secretary of the State. It was also provided by the fifth section thereof that the said act should not affect the liabilities of any railroad, turnpike, or other corporation or person, for or on account of the bonds issued or loaned or indorsed by the State for internal improvements or other purposes, nor any lien in favor of the State as against purchasers of delinquent railroad.

And this respondent says that all the holders of the bonds of the State, including the complainant, if he then held any such, or, if not, his predecessors in the ownership of any he may now hold, and those associated and acting with him in the prosecution of this and similar suits, accepted the provisions of these acts, and funded their over-due coupons, and received payment of current accruing interest after January 1, 1874, to January 1, 1876, in accordance with the terms thereof, and particularly that they registered their bonds, in compliance with the provisions of the ninth section of said act, and thereby assented to and adopted all the provisions of said act.

17. This respondent further says that in the meantine, on the tenth day of November, 1868, the Governor of the State had informed the General Assembly that six railroads in the hands of the receivers were at that time indebted

to the State, on interest account due July 1, 1868, one million one hundred and twenty thousand nine hundred and ninety-six dollars and eighty-six cents, and stated that he would have seized two other roads for failure to pay the July interest of that year, and placed them in the hands of receivers, but that he had learned by experience that to do so would only entail increased burdens upon the State treasury, and expressed the opinion that the interest of these roads, as well as that of the State, required that they should be sold, and the proceeds thereof applied to the reduction of the State debt. In the same message, he said:

"Leading gentlemen, connected with important railroads largely indebted to the State, are asking for authority to issue second mortgage bonds, with a view of exchanging them for State bonds. Thus purchasing State bonds by the avails of these second mortgage bonds, the debt now due by the State would in like amount be transferred to these railroad companies, and so the State would be relieved of a burden of several million of dollars of debt now resting upon it. I regard this proposition with approval, and advise its adoption by the Assembly. The payment of large debts now due from the roads alluded to, and the sale of the roads already in the hands of receivers, would reduce the State liabilities at least one-third."

And this respondent says that at that session, in pursuance of the policy thus recommended, the General Assembly passed, on February 25, 1869, the act entitled "an act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," and on the 20th day of January, 1870, the act entitled "an act for the payment of the State debt," and on the first day of July, 1870, the act entitled "an act authorizing the sale and transfer of the interest of the State in delinquent

railroad companies," and on the 8th day of July, 1870, the act entitled "an act appointing commissioners under certain circumstances to lease delinquent railroads," and on the 21st day of December, 1870, the act entitled "an act to amend the act of 1870, ch. 79, for the sale of interest of the State in delinquent railroad companies, passed July 1, 1870," and on the 13th day of December, 1871, the act entitled "an act to further enable railroad companies to pay their debts to the State and complete the construction of their roads."

And this respondent says, that at the session of the General Assembly in 1871, the Governor, in his message to that body, stated that under said act of February 25, 1869, as amended by the act of January 20, 1870, ch. 44, over eight million dollars in the bonds of the State had been retired and cancelled; that other roads had purchased and were then purchasing bonds with which to cancel their liabilities to the State under the said acts; and in order to prevent further delay on the part of the solvent roads that had not retired their indebtedness to the State under said act, recommended that the act be either repealed, to take effect at some future time not remote, or that its provisions be so amended as that the roads be required to pay all accrued interest as well as the sinking fund not theretofore paid in. In the same document, the Governor also stated that but three of the delinquent railroads remain unsold, and added: "It will be a gratifying result when the State is entirely divorced from the railroad system. And, although the sales will not realize all that was desired, and leaves a large debt to be provided for, yet the internal improvement system of Tennessee has added millions to her wealth and diffused such energy and enterprise into every class of society, that no intelligent man can regret the policy which inaugurated the

system, notwithstanding a large amount of appropriations made since the war have been improperly expended."

18. This respondent further says, that the several railroad companies to whom loans of internal improvement bonds had been made and the State of Tennessee dealt together under the said acts of February 25, 1869, and of January 20, 1870, according to the terms thereof, the various railroad companies who were able to do so, and who were on that account called solvent, purchasing in the open market, at the market price, bonds of the State of Tennessee, without discrimination as to their description, or on what account, or to whom issued, the only practicable mode in which they could make purchases of the public debt of the State, and paying them to the State in satisfaction of the indebtedness of such railroad companies to the State on account of its advances of its own bonds to them, and in discharge of the lien reserved therefor to the State under the internal improvement law of 1852 and the amendments thereto; and in order to raise the means so to do, the said railroad companies issued their own bonds, secured by mortgages on their railroad property as a first lien thereon, in substitution for that of the State, and declared by law and the certificate of the State to be first mortgage bonds, and the same were sold in the markets of this country and of Europe, on the faith thereof, to innocent purchasers for value, to the amount of many millions of dollars, now outstanding; and that those railroads, known as delinquent railroads, the corporations owning which were not able thus to liquidate their indebtedness to the State, were sold by the authority of the State, by virtue of judicial decrees, duly rendered in proceedings instituted and prosecuted by the State under and according to the provisions of the act of December 20, 1870, to

which all parties in interest, including the holders of State internal improvement bonds, were parties and bound thereby; and the purchasers thereof paid for the same, as by said act and decree they were authorized to do, in any bonds of the State.

And the respondent says that by virtue of said dealings and transactions, and in consequence thereof, the result, in regard to the reduction of the public debt reached, was as follows: The total bonded debt of the State, about the first of January, 1870, was about forty millions of dollars. The payments on account thereof, for and on behalf of railroad companies to whom internal improvement bonds were loaned, made into the treasury of the State, in bonds and coupons overdue, amount to twenty-one million four hundred and eighty-five thousand dollars, leaving the unpaid public debt of the State amounting to about nineteen million five hundred and fourteen thousand dollars. The account between the State and the two descriptions of railroads is as follows:

First. Defaulting railroads sold:

Bonds issued	$14,628,000 00
Int. funded, 1866	1,122,306 00
Int. unpaid, July, 1870	3,331,163 12
U. S. claims assumed	511,560 00
Total	$19,593,029 12
Amount realized by sale	6,698,000 00
Loss to State	$12,895,029 12

Second. Roads which have settled their indebtedness:

Bonds issued	$12,742,000 00
Int. funded, January, 1866	1,850,768 00
Sinking fund paid	493,306 00
Unaccounted for	1,255,700 00

For a more particular account thereof, reference is hereby made to the statements herewith filed and marked Exhibit No. 5.

19. And this respondent further says that during the whole period of these transactions, from and including the settlement between the State and the Louisville and Nashville Railroad Company, beginning in May, 1865, and during the whole progress of this legislation, and of the liquidation, arrangements, and settlements authorized and required by it, and of the dealings between the railroad companies and the State, and of the railroad companies in borrowing money on the security of mortgages on their property, on the faith that all prior liens on account of the loans by the State of internal improvement bonds had been thereby removed and discharged or transferred by operation of law, to bonds issued by the railroad companies in substitution therefor, the holders of the bonds of the State of Tennessee, in general, had knowledge of all that was taking place; the facts themselves were public, historical, and notorious, and the holders of Tennessee State bonds, at an early stage in this series of transactions, formed a voluntary organization, represented by a committee, for consultation and cooperation in matters of common interest, and kept themselves well advised of each step in the history of the business; and on or about May 1, 1870, said bondholders, through their committee, of which J. J. Dor ldson, Esq., was chairman, obtained a legal opinion from Hon. Henry E. Davies and Noah Davis, eminent counsel of the city of New York, affirming that they were, in equity, beneficial owners of a lien under the Act of 1852, reserved nominally to the State, upon each railroad, for the specific payment of the identical bonds issued to that railroad company, by virtue of a contract, protected by the Constitution of the United States; which

opinion was printed in pamphlet form and generally circulated among the holders of the Tennessee State bonds, but not otherwise. And these respondents say, that he is informed and believes, and so avers, that the said, or similar organization of Tennessee State bond holders, has been kept up ever since, and that the present suit, and other similar suits, now pending, are prosecuted in the name of the complainants, by a committee of such organization.

And this respondent says that at no time did the said holders of Tennessee State bonds, or any one of them, including the complainant or those associated and acting with him in the prosecution of this and similar suits, ever make any demand upon any railroad company for the payment of any interest on the said bonds, or receive from any railroad company payment of any coupon, or notify or inform, either directly or indirectly, any railroad company that it was claimed that any such liability, right, or lien existed, or make any objection to any of the acts of the State of Tennessee, inconsistent therewith, or object to the passage thereof, or oppose any payment, settlement, and liquidation, by any railroad company, of its indebtedness to the State, or make public, in any way, their claim as now asserted in this bill of complaint.

On the contrary thereof, this respondent says that they not only acquiesced in all the foregoing acts and transactions, by tacit approval and consent, but that they actively advised and urged in individual cases, including the present complainant, or some one or more of those with whom he is and has been acting, the consummation of these arrangements, as beneficial to the holders of State bonds, and by frequent and public communications, to and with the authorities of the State, treated and dealt with it as their only debtor, and gave it to be understood that they looked to no other, and had no other to whom to look.

And this respondent says that on the 16th day of January, 1878. there was held, in the city of New York, a meeting of holders of Tennessee State bonds, the call for which was signed by the complainant, and others with whom he was then acting, and with whom he is still associated, and who, jointly with him, are prosecuting this and similar suits—namely, Eugene Kelly, Peter Geddes, John T. Terry, and others—and at which they were present and participating, and at which the following preamble and resolutions were adopted, viz.:

"*Whereas*, On the 8th March, 1877, at a meeting between a committee of five members of the Tennessee legislature (of which Col. John H. Savage was chairman) and a committee of arbitration (of which Mr. George S. Coe was chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with a view of ascertaining and determining what a fair and equitable adjustment of it would be; and,

"*Whereas*, At the conclusion of the conference between the committee of the Tennessee legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest, the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and,

"*Whereas*, The session of the legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was no time to enact a law to give it effect; and,

"*Whereas*, It was very generally understood that an extra session of the legislature would be con-

vened, to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration, and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the Governor propositions of compromise on the terms of said award, and the Governor did thereafter convene the legislature in extra session, to consider said proposition ; and,

" *Whereas*, during the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement ; and,

" *Whereas*, The bondholders of Tennessee had neither an agent nor other person to represent them before the legislature, but confided in the legislature, and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentlemen who had acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly ; therefore,

" *Resolved*, That efforts made by any persons who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declaration alleged to have been made at Nashville, that a settlement could be affected with the bondholders upon a lower basis than that proposed by the committee of arbitrators, of which Mr. George S. Coe is chairman, has no foundation in fact so far as it relates to the great body of bondholders.

"*Resolved*, That while we deplore the attitude assumed by the legislature, while assembled at Nashville, in December, toward the bondholders, we believe that it resulted from the influence and unwarrantable interference of other parties than real bondholders, or their representatives.

"*Resolved*. That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them, the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in loss to its citizens, even far greater than to its creditors.

"*Resolved*. That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

"*Resolved*, That a committee of five be appointed, consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as, in their judgment, may be for the interest of the bondholders; but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted."

And these respondents say that on the 11th day of December, 1877, the complainant, C. Amory Stevens, had addressed, by telegraph from New York, to the Governor of Tennessee, a communication, which was laid before the General Assembly, then in session, as follows:

"NEW YORK, *Dec.* 11, 1877.

"GOVERNOR JAS. D. PORTER:

"I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition, sent you through the committee of arbitration; and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar. I think this dispatch represents the sentiments of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the legislature, through your excellency, to reciprocate this feeling, and make a settlement without further delay.

"Please submit this to the legislature for its action.

"THE ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS, *Trustee.*"

And this respondent says that the public debt of the State of Tennessee, which was the subject of these communications and propositions, amounted at that time, as reported to the General Assembly by the Governor, in the same message which transmitted the proposition made through the committee of arbitration, to twenty-three millions two hundred and twelve thousand six hundred and six dollars, on the first day of January, 1878, and which consisted chiefly of bonds issued under the internal improvement acts of 1851, 1852, and the amendments thereto, and those issued for past due interest, and known as funding bonds, constituted what remained of the outstanding bonds

of the State, after the payments made by the railroad companies in satisfaction of their indebtedness to the State under the internal improvements acts, and the sale of the delinquent roads and the payment of the purchase-money thereof in the bonds of the State, as provided in the acts of 1869, 1870.

And this respondent says and insists that the construction of the internal improvements act, thus practically established by the subsequent legislation and dealing of the public authorities of the State, with the railroad companies and with its creditors, and universally acquiesced in, has thereby acquired the force of law, and ought not now to be questioned, much less disturbed, to the injury and loss of many innocent persons in this country and Europe, who have invested large sums of money on the faith and credit thereof; and these respondents say that the complainant and those with whom he is associated and is acting in this behalf, have, by their acquiescence in this course of dealing, invited and encouraged others to repose confidence and trust in the same, and ought not now to be permitted, in equity, to question the validity of transactions to which they have thus consented, and that whatever rights they may originally have had, as holders of State bonds, adverse thereto, have been lost, by their own laches, acquiescence, and neglect to urge them, when they ought, if they had intended to insist upon them, and the claim now made so to do is, consequently, stale and inequitable.

20. And this respondent, further answering, says it denies all charges and allegation of fraud and bad faith made or imputed in said bill to their co-defendants, or to the State of Tennessee.

21. This respondent, further answering, says that he has requested the said The Farmers' Loan and Trust Company, being trustee under said tripartite agreement for his benefit and that of other holders

of the said bonds numbered from one to fourteen hundred, and holder of the legal interest and title for that purpose of the lien now claimed by the complainant for his own use and benefit, to cause itself to be made a party defendant in this suit, and defend the same for the interest of this respondent and others similarly situated, but the said The Farmers' Loan and Trust Company has declined and refused so to do, on the ground that as it is a corporation created by the laws of the State of New York and a citizen thereof, the nature and limits of the jurisdiction of this Court forbids and prevents it from so doing; and for that reason this respondent appears in his own name and in behalf of all others similarly situated and of like interest who may choose hereafter to come in, and insists that by reason of the premises the claim of the complainant in the bill is without equity, and that the lien of the Farmers' Loan and Trust Company upon the said railroad and other premises under the said deeds and agreements, herewith exhibited, is the only subsisting lien on the said property therein conveyed and mortgaged, and for the sole and exclusive uses and purposes therein mentioned.

22. And this respondent therefore, by reason of the premises, prays that this answer may be taken as a cross bill, and that the complainants and their codefendants may be made defendants thereto, and compelled to make answer thereunto, and that on final hearing this honorable Court will order, adjudge and decree that said deeds of trust and mortgage herein set forth, to the said The Farmers' Loan and Trust Company, trustee as aforesaid, for the benefit and security of the holders of the bonds therein described, is, in respect to the claim of the complainant, and of all other holders of the bonds of the State of Tennessee, the best and only lien and incumbrance on said property therein described, and that this

respondent and those whom they represent may be forever quieted in their said right and title under the same and the said mortgage, against the claim of the complainant and all other holders of bonds of the State of Tennessee, aforesaid, and that they be perpetually enjoined from hereafter setting up their claim as aforesaid, and for such other and further relief as this respondent and complainant in said cross-bill may in equity and good conscience, and according to the usages and practices of courts of chancery, be entitled to.

MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendants.

STANLEY MATTHEWS,
Of Counsel.

State of Maryland,
County of Baltimore, } *ss.*

Personally appeared before me,.....

.....

and made oath that the facts stated in the foregoing answer are true to the best of his knowledge, information, remembrance, and belief.

.....

Sworn to and subscribed before me, this.....

day of....., 1879.

.....

EXHIBIT No. 1.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY, FIRST MORTGAGE SEVEN PER CENT. GOLD BONDS. PRINCIPAL DUE JANUARY, 1915. INTEREST PAYABLE JANUARY 1st AND JULY 1st. PRINCIPAL AND INTEREST PAYABLE IN THE CITY OF NEW YORK.

AN INDENTURE, made the twentieth day of August, eighteen hundred and seventy-seven, between the Memphis and Charleston Railroad Company, a corporation duly created and organized by and under the laws of the respective States of Tennessee, and Alabama and Mississippi, party of the first part, and the Farmers' Loan and Trust Company, a corporation created by the laws of the State of York, and located in the city of New York, party of the second part.

Whereas, The said party of the first part now possesses, owns, and is operating its main line of railroad, extending from Memphis, in the State of Tennessee, *via* Corinth, in the State of Mississippi and Huntsville, in the State of Alabama, to Stevenson, in the said State of Alabama, a distance of two hundred and seventy-two miles or thereabouts, together with the branch thereof in the State of Tennessee, known as the Somerville and Moscow branch extending from Moscow, on the main line, to Somerville, a distance of about fourteen miles, and the branch thereof in the State of Alabama, extending from Tuscumbia, on the main line, to Florence, a distance of about five miles, and also the Washington street branch, so called, extending from the Memphis and Charleston Railroad depot, in the city of Memphis, through Washington street and Centre Landing to the Mississippi river, a distance of about one mile; and also certain rights and privileges for transportation of its passengers and freight in its own cars over the railroad running between Stevenson, in Alabama, and Chattanooga, in Tennessee, under and in virtue of a certain contract of June twenty-third and July twenty-sixth, eighteen hundred and fifty-eight, made between the said The Memphis and Charleston Railroad Company and the Nashville and Chattanooga Railroad Company, and the said party of the first part also owns and possesses the rolling stock, or equipment and machinery for the operation of its said railroad and

branches; and also the depots and grounds, and buildings and other appurtenances of and for the uses and purposes of its said railroad and branches and other real estate situate upon and along the line of its road, and the other things hereinafter described and mortgaged.

And whereas, All those parts of the said railroad, as well branch as main line, which are situate in the State of Tennessee, with the lands and premises thereunto appertaining, embracing all the real estate of the said party of the first part, situate in the State of Tennessee, with the improvements thereon, and the rolling stock or equipment, and other appurtenances thereof, are subject to a first and paramount statutory lien, in the nature of a mortgage, originally created and existing in favor of the State of Tennessee, for or in respect of the amount of certain Tennessee State bonds, loaned or advanced, or delivered to, or in aid of the said railroad company, by the State of Tennessee, under and in pursuance of the general internal improvement laws of that State, and for or in respect of the amount of principal and interest of which State bonds, thus loaned, advanced, or delivered the said The Memphis and Charleston Railroad Company became indebted to the State of Tennessee, and which indebtness of said railroad company to said State, and the lien held by the said State therefor, have been recently, with the consent and approbation of the said The Memphis and Charleston Railroad Company, and of its board of directors, duly assigned and transferred by said State to, and are now held and owned by Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the city of New York, in the like position and with the like rights to enforce the same as the said State had, which assignment and transfer was made and effected under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "an Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee, passed February 25, 1869, and the other laws of said State in that behalf, and the amount of such indebtedness of said party of the first part, and of the attendant lien therefor upon its said railroad and other property in the State of Tennessee thus assigned to, and now held by, said Adrian Iselin and Adrian Iselin, Junior, including the interest accrued thereon to the first day of July, eighteen hundred and seventy-seven, is seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and the principal thereof bears interest from said first day of July, eighteen hundred and seventy-seven, at the rate of six per cent. per annum.

And whereas, There are now outstanding and unpaid, as debts of the said party of the first part, twelve hundred and ninety-three thousand dollars, in amount of the so-called first mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said company's so-called first mortgage or deed of trust, dated May first, eighteen hundred and fifty-four, to James Punnett, G. B. Lamar, and Thomas Fearn, as trustees, covering the said railroad company's line of railroad, situated in the States of Alabama and Mississippi respectively, with the appurtenances and equipment thereof, as a first mortgage lien thereon, and likewise covering the said railroad company's line of railroad in the State of Tennessee, with the appurtenances and equipment thereof, subject and subsequently to the prior and paramount lien and incumbrace thereon of the above mentioned debt and lien originally existing in favor of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, Junior, the principal of the said so-called first mortgage bonds, for twelve hundred and ninety-three thousand dollars, falling due and payable on the first day of May, eighteen hundred and eighty, and the said bonds in the meantime bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November.

And whereas, There are also now outstanding and unpaid, as debts of the said party of the first part, one million dollars in amount of the so-called second mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said company's so-called second mortgage or deed of trust, dated January first, eighteen hundred and sixty-seven, to Gustavus L. Mastin, George W. Neal, and William C. Rehren, as trustee, covering the same premises as the said so-called first mortgage, but subject to the prior lien and incumbrance of such so-called first mortgage, and in like manner therewith subject, so far as respects the said line of railroad, in the State of Tennessee, and the appurtenances and equipment thereof, to the prior and paramount lien and incumbrance thereon of the said debt and lien, originally existing in favor of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, Junior, as aforesaid, the principal of the said so-called second mortgage bonds, for one million dollars, falling due and payable on the first day of January, eighteen hundred and eighty-five, and the said bonds in the meantime bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first daysof January and July.

Aud whereas, The said party of the first part is subject to certain further indebtedness, for the liquidation whereof it needs to make provision.

And whereas, The said Adrian Iselin and Adrian Iselin, Junior, have expressed their willingness in a certain manner, and upon certain conditions, to make a certain eventual deduction or discount from the full amount now due or owing to them, upon the said indebtedness and lien, originally existing in favor of the State of Tennessee, which has been assigned to and is now held by them as aforesaid, provided the said railroad company will give to them such additional collateral security for such indebtedness upon the terms and conditions hereinafter mentioned in that behalf, and enter into and carry out such arrangements with them in respect of the eventual liquidation and satisfaction of said indebtedness as are hereinafter stated.

And whereas, In the exercise of the powers in that behalf possessed by it, under the laws of the respective States of Tennessee, Alabama, and Mississippi, in order to provide for further securing the payment of its aforesaid indebtedness, originally existing in favor of the State of Tennessee, assigned and transferred to, and now held by, Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and also to make such provision as is hereinafter contained or declared, for the eventual liquidation and satisfaction of that indebtedness, with the interest accruing and to accrue thereon, from and after the first day of July, eighteen hundred and seventy-seven, and likewise in order to provide for taking up and discharging its above-mentioned, now outstanding first mortgage bonds, so called, for twelve hundred and ninety-three thousand dollars, with the interest thereon, and its said second mortgage bonds, so called, for one million dollars, with the interest thereon, and its other now existing indebtedness, hereinbefore referred to, and thus to consolidate and arrange its debts, as by law it is entitled to do, and for other lawful uses and purposes of its business, and agreeably to the laws regulating it. The said The Memphis and Charleston Railroad Company, in accordance with resolutions of its share-holders, and of its board of directors, at meetings of such share-holders and such board of directors, respectively, duly and regularly held, has caused to be prepared and made ready for execution, under its corporate seal, with the signatures of its president and treasurer, respectively, and for subsequent issue, negotiation, and use, as hereinafter provided, its certain, so-called, consolidated first mortgage bonds, for the aggregate amount of four millions seven hundred thousand dollars of United States gold coin, consisting of four thousand seven hundred of such bonds, numbered consecutively from 1 (one) to 4,700 (four thousand seven hundred), both inclusive, bearing date, respectively, the twentieth day of August, eighteen hundred and seventy-

seven, each of such bonds being for the payment to the holder thereof, on the first day of January, nineteen hundred and fifteen, in the city of New York, of one thousand dollars, in United States gold coin, and for the payment of interest thereon, from the first day of July, eighteen hundred and seventy-seven, and, in the meantime, at the rate of seven per cent. per annum, in like gold coin, in the city of New York, semi-annually, on the first days of January and July, in each year, on presentation and surrender of the coupons, or interest warrants for such interest, to such bond annexed, and in accordance with resolutions, both of its share-holders and of its board of directors, at meetings of such share-holders and such board of directors, respectively, duly held, has determined to secure the payment of the principal and interest of such bonds, which shall be issued within the said aggregate limit of four millions seven hundred thousand dollars, by this mortgage, in the manner and to the effect hereinafter expressed.

And whereas, The form of such bonds, and of the coupons or interest warrants to be annexed thereto, and of the trustee's certificate to be indorsed thereon, by the trustee of this mortgage, viz., the said party of the second part hereto, and to be executed on behalf of the said party of the second part hereto, by its president, are to be substantially as follows :

UNITED STATES OF AMERICA.

(NUMBER.) CONSOLIDATED (NUMBER.)

FIRST MORTGAGE BONDS.

The Memphis and Charleston Railroad Company.

INTEREST PAYABLE SEMI-ANNUALLY, JANUARY AND JULY.

(1000.) (VIGNETTE.) (1000.)

The Memphis and Charleston Railroad Company promises, for value received, to pay to the holder of this bond, on the first day of January, nineteen hundred and fifteen, the sum of one thousand dollars, in United States gold coin, in the city of New York, with interest thereon, in the meantime, at the rate of seven per cent. per annum, payable in like gold coin, in the city of New York, semi-annually, on the first days of January and July in each year, on presentation and surrender of the annexed interest warrants.

This bond, with others issued or to be issued, amounting to not more than four millions seven hundred thousand dollars, is secured by a mortgage of said company's road, franchises, and equipment, as provided in an indenture of trust and mortgage made to the Farmers' Loan and Trust Company, of the city of New York, dated the twentieth day

of August, eighteen hundred and seventy-seven. This bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the transfer company, no transfer, except on the books of the agent of the company, shall be valid, unless the last transfer be to bearer.

In witness whereof, the said company hath hereunto affixed its corporate seal, and caused this bond to be signed by its president and treasurer, this twentieth day of August, eighteen hundred and seventy-seven.

(SEAL.)

———, *President.*

(VIGNETTE.)

———, *Treasurer.*

FORM OF COUPON.

$35	On the first day of January, 18—, the Memphis and Charleston Railroad Company will pay to bearer, in the City of New York, in United States gold coin, Thirty-five Dollars, being for semi-annual interest on Bond No. ———. ———, *Treas.*	$35
50		

FORM OF TRUSTEES CERTIFICATE.

We hereby certify that this is one of the bonds issued under the mortgage therein referred to.

THE FARMERS' LOAN AND TRUST CO., TRUSTEES,
by ———, *President.*

and none of which bonds are to be entitled to share in the benefit or security of this mortgage, unless they shall have indorsed thereon such certificate of the trustee hereunder, or its successor or successors in the trust, and which coupons are to be issued with the engraved signature of the treasurer of said railroad company, and when thus issued by said railroad company, it is hereby by it agreed shall be as binding upon it as if such signature were written by said treasurer.

Now, this indenture witnesseth, that in order to secure the due and punctual payment of the principal and interest mentioned in, and to become payable upon the above mentioned bonds, within the said aggregate limit of four millions seven hundred thousand dollars, in United States gold coin, and of the coupons accompanying the same, according to the tenor and effect of such bonds and coupons, repectively,

and in consideration of the premises aforesaid, and of one dollar to the said party of the first part, in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said The Memphis and Charleston Railroad Company, party of the first part, hath granted, bargained, sold, conveyed, assigned, transferred and set over, and by these presents, doth grant, bargain, sell, convey, assign, transfer and set over, unto the said The Farmers' Loan and Trust Company, party of the second part, and to its successors and assigns forever, all and singular the main line of railroad of the said Memphis and Charleston Railroad Company, extending from the point of commencement thereof, in the city of Memphis, in the State of Tennessee, via Corinth in the State of Mississippi, and Huntsville, in the State of Alabama, to the terminus thereof in Stevenson, in the said State of Alabama, connecting there with the Nashville and Chattanooga Railroad, being a distance of two hundred and seventy-two miles, be the same more or less, and also the branch of said railroad, situate in the State of Tennessee, known as the Somerville and Moscow branch extending from Moscow, on the main line, to Somerville, a distance of about fourteen miles, be the same more or less; and also the branch of said railroad, situate in the State of Alabama, extending from Tuscumbia, on the main land to Florence, a distance of about five miles, be the same more or less, and including the bridge across the Tennessee river, near Florence; and also the Washington Street branch, so called, of said railroad, extending from the depot of said main line, in the city of Memphis, through Washington street and Centre Landing to the Mississippi river and the depot grounds and wharves on said river, and all the rights and privileges of said railroad company in respect of the use of the streets and the wharves and levee on the Mississippi river; and also all and singular the rights of transportation of the passenger cars and freight cars of the said party of the first part on and over the railroad between Stevenson, in Alabama, and Chattanooga, in Tennessee, which the party of the first part has or is entitled to, or can, or could now or hereafter claim under or in virtue of the contract of the date of June twenty-third and July twenty-sixth, eighteen hundred and fifty-eight, made between the Memphis and Charleston Railroad Company and the Nashville and Chattanooga Railroad Company, and all the rights and privileges whatsoever, for or in respect of the use of or transportation over the linen of railroad betwee Stevenson and Chattanooga, now belonging to the Nashville, Chattanooga and St. Louis Railway Company, which the said party of the first part

holds or is in anywise entitled unto, or can, or could now or at any time hereafter, claim either under or in virtue of the before-mentioned contract of June and July, eighteen hundred and fifty-eight, or otherwise howsoever, together with all and singular the road-way or track of the aforesaid main line of railroad extending from Memphis to Stevenson as aforesaid, and of the said several branches respectively, and the superstructure and rails laid or to be laid thereon respectively, and all the appurtenances thereon, and all sidings, turnouts, bridges, wharves, viaducts, culverts, walls, fences, ways and rights of way, depots, station-houses, engine-houses, car-houses, freight-houses, wood-houses, depot grounds, and lands procured, provided, or intended for use for that purpose, building and repair shops, machine-shops, and land used or procured, or intended for sites thereof, and other buildings, structures, lands, and improvements whatsoever, leases and leasehold interests, contracts, easements, and privileges now belonging or appertaining to, or used, or procured, or designed or to be used for the purpose of, or in connection with, the said main line of railroad and branches respectively, or the maintenance or operation thereof, or of any part thereof, or which shall at any time hereafter belong or appertain to, or be used, or procured, or obtained with the design of being used for the purposes of or in connection with said main line of railroad and branches respectively, or the maintenance or operation thereof, or of any part thereof, and also all the locomotives, tenders, passenger cars, baggage cars, freight cars, and other cars, and all other rolling stock or equipment, and all machinery, tools, and implements, rails, chairs, and spikes, and other materials whatsoever now owned or possessed by the said party of the first part, or which shall at any time or times hereafter be acquired, owned or possessed by the said party of the first part, or its successors, for the uses or purposes of, or designed for use, in connection with or for the operation, maintenance, or reparation of the said main line of railroad and branches respectively, or the equipment or appurtenances thereof, and all the engines, cars, and rolling stock or equipment of any kind, machinery, tools, implements, rails, and other materials, which shall at any time or times hereafter belong or appertain to, or be in use, or on hand designed for use, for the purposes of said main line of railroad and branches respectively, or any part thereof, and all the lands and real estate whatsoever of any and every kind whatsoever, and all improvement thereon, situate in the States of Tennessee, Alabama, and Mississippi respectively, which are now owned or possessed by, or which now belong to the said party of the first part, and also all and singular

the rights, privileges, and franchises whatsoever, which the said party of the first part now holds, possesses, or is entitled unto, and also all franchises, rights, and privileges whatsoever which the said party of the first part shall hereafter acquire or become possessed of, or entitled unto, for or in respect of or for the uses or purposes of the said main line of railroad and branches respectively, or the operation or maintenance thereof; and also all the tolls and income of the said maid line of railroad and branches respectively, together with all and singular the tenements, hereditaments, and appurtenances unto the premises aforesaid, or any of them, or any part thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well at law as in equity, of the said party of the first part, of, in, and to the same and every part and parcel thereof, with the appurtenances, but subject always to the prior and paramount lien now held by Adrian Iselin and Adrian Iselin, Junior, upon such part of the said railroad and branches as is situate in the State of Tennessee, and upon the rolling stock or equipment thereunto belonging or appertaining, and upon all that portion of the said hereby mortgaged premises or property which is situate in the State of Tennessee, for the amount of the aforesaid indebtedness of said party of the first part, originally existing in favor of the State of Tennessee, and assigned by said State to, and now held by Adrian Iselin and Adrian Iselin, Junior, as aforesaid, which lien is expressly understood and hereby agreed and declared, is to remain in full force and effect as a lien in favor of said Adrian Iselin and Adrian Iselin, Junior, and their representatives or assigns, prior and paramount to the lien created by this indenture, until the indebtedness for which such lien is held shall be paid and satisfied or discharged; and the same is, or is to be, expressly confirmed and further assured by the said Memphis and Charleston Railroad Company to the said Adrian Iselin and Adrian Iselin, Junior, and their representatives and assigns, as a good and valid lien prior to this indenture of mortgage upon all that part of the hereby mortgaged premises which is situate in the State of Tennessee, including the rolling stock or equipment and other chattel property belonging or appertaining to the portion of said railroad line, in the State of Tennessee, for the above mentioned amount of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, with the interest thereon accrued and to accrue from and after July first, eighteen hundred and seventy-seven, and with the assurance, con-

firmation, and grant by said railroad company to said Adrian Iselin and Adrion Iselin, Junior, of appropriate remedies for enforcing and effectuating said lien and the security thereof, and of the said indebtedness.

To have and to hold, all and singular, the said main line of railroad and branches respectively, with their appurtenances, and rolling stock and equipment, present and future, and all other the premises, properties, rights, interests, and franchises, immunities, privileges, and other things aforesaid, subject to the said prior lien in favor of Adrain Iselin and Adrian Iselin, junior, and their representatives or assigns as aforesaid, unto the said party of the second part as trustee as aforesaid, and its successors and assigns forever, in trust for the equal *pro rata* use, benefit, and security of all the persons and corporations who shall become or be the owners or lawful holders of any of the said bonds within the aggregate amount of four million seven hundred thousand dollars, intended to be hereby secured as aforesaid, without preference of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiation thereof, but with such special rights, nevertheless, to the holders of the fourteen hundred of such bonds, numbered from one to fourteen hundred inclusive, as are hereinafter in that behalf declared and provided for.

Provided always, nevertheless, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay and satisfy the said bonds to the aggregate amount of four million seven hundred thousand dollars hereby intended to be secured as aforesaid, or such of the same as shall be issued, and the interest from time to time accruing thereon, according to the tenor and effect of the said bonds and the coupons or interest warrants accompanying the same, then this indenture, and all and singular the estates, rights, and interests hereby granted to or vested in the said party of the second part, shall cease, determine, and become of no effect.

And it is hereby understood, declared, granted, agreed, and provided, that of the aforesaid bonds, to the aggregate amount of four million seven hundred thousand dollars, designed to be issued under and secured by this indenture as aforesaid, fourteen hundred thousand dollars in amount thereof, being the fourteen hundred of such bonds for one thousand dollars each, numbered from one (1) to fourteen hundred (1400) inclusive, are appropriated, designed, and intended to be used and applied by the said party of the first part, for the purpose and in the manner following: that is to say, the same are to be transferred and delivered by the said railroad company, party of the first part, to the said

Adrian Iselin and Adrian Iselin, junior, as an additional collateral security to them and their representatives and assigns for the aforesaid indebtedness of the said railroad company, originally existing in favor of the said State of Tennessee, and assigned and transferred to and now held by said Adrian Iselin and Adrian Iselin, junior, as aforesaid, and now amounting, as aforesaid, to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, besides the interest accrued and to accrue thereon from and after the first day of July, eighteeen hundred and seventy-seven, under an arrangement and agreement between said railroad company, party of the first part thereto, and said Adrian Iselin and Adrian Iselin, junior, by which such transfer and delivery to them of the said fourteen hundred bonds is not in anywise to operate as a payment of or upon account of the said indebtedness held by them under transfer from the State of Tennessee, nor is the same to diminish, impair or affect the said prior and paramount lien for the amount of such indebtedness, and the interest accrued and to accrue thereon upon the said portion of said railroad situate in the State of Tennessee, with its appurtenances and equipment, and the other property in said State which originally existed in favor of the State of Tennessee, and is now held by said Adrian Iselin and Adrian Iselin, junior, under transfer from said State as aforesaid; but that notwithstanding such transfer and delivery to said Adrian Iselin and Adrian Iselin, junior, of said fourteen hundred bonds, the said debt against said railroad company now held by them under transfer from the State of Tennessee, and the lien thereof, originally existing in favor of said State, and vested in them by transfer as aforesaid, and all the rights and remedies and securities of said Adrian Iselin and Adrian Iselin Junior, for the security of such indebtedness originally existing in favor of the State, with the interest accrued and hereafter to accrue thereon, and for enforcement of the lien thereof, are to remain in full force and effect, as if such fourteen hundred bonds had not been transferred and delivered as additional security thereof as aforesaid.

Provided, however, that all sums of money which shall be actually paid by said railroad company on account of interest or principal upon such fourteen hundred bonds, or either of them, either to said Adrian Iselin and Adrian Iselin, junior, or to any one holding any of such bonds by or under transfer from them, are, when such payments respectively are actually made and realized in cash, and not before, to be credited as payments on account of the said original indebtedness to the State of Tennessee assigned to Adrian Iselin and Adrian Iselin, junior, as aforesaid, reck-

oning for the purpose of such credit such payments made in gold at the value thereof in United States legal tender currency at the time of such payment; which payments received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, are to be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, junior, as aforesaid, and which payments, if any, received for or on account of principal of such fourteen hundred bonds shall be applied on account of the principal of such indebtedness originally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven; and with the further provision in such arrangement that said Adrian Iselin and Adrian Iselin, junior, shall be entitled to sell or otherwise dispose of and to transfer to any person or persons or corporations any of the said fourteen hundred bonds so transferred and delivered to them as they may deem fit, without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their assigns in respect thereof, and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of such bonds so sold or disposed of or transferred, but subject to the aforesaid obligation to give credit on such indebtedness for all payments which shall be made for principal or interest on such bonds so sold or disposed of or transferred when such payments are actually made and realized in cash, but not before; and under the further understanding and arrangement that said Adrian Iselin and Adrian Iselin, Junior, in anticipation of making sales, or dispositions, or transfers of such fourteen hundred bonds or portions thereof, shall be at liberty to assign and transfer the said original indebtedness of the railroad company to the State, and the State's lien therefor transferred to them as aforesaid, and all their present and future rights and remedies in respect thereof to a trustee or trustees, to be held for the equal *pro rata* benefit of the holders from time to time of such fourteen hundred bonds, numbers one to fourteen hundred inclusive, and so as that proportionate beneficial or equitable interests in the said indebtedness originally existing in favor of the State, including the interest thereon accrued and hereafter to accrue, and in the lien which was held by the State therefor, and in the rights and remedies in respect thereof may vest in equitable or beneficial interest in the holders from time to time of such

fourteen hundred collateral bonds, numbers one to fourteen hundred inclusive, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, in respect of so many of said fourteen hundred bonds as may remain in their hands untransferred and undisposed of by them, with *pro rata* equality, in proportion to the respective amounts held by such parties respectively of such fourteen hundred bonds, and so that the holder of each of such fourteen hundred bonds, numbers one to fourteen hundred inclusive, may be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the interest thereon accrued and to accrue, and the said liens and rights held for the security thereof corresponding with the principal and interest of such bond so held by him, and with the proper proportionate addition thereto by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such original indebtedness, with its attendant liens and securities, shall remain in the said trustees to whom the same shall be so transferred by said Adrian Iselin and Adrian Iselin, Junior, in trust for the holders of said fourteen hundred collateral bonds, to the end and intent that notwithstanding any sale, or other disposition, or transfer which may be made of such fourteen hundred collateral bonds, the said original debt and lien preserved in full force, and the said bonds held as further collateral security may, in substance and effect, be beneficially held by or for account of the same persons, and that the parties may substantially, in respect of beneficial or equitable interests, be in like positions as if the said original debt and lien and said collateral bonds had all continued to be held by said Adrian Iselin and Adrian Iselin, Junior, or had been all together assigned over by them to the same person or persons.

And inasmuch as under such proposed arrangement, and in virtue of the terms and condition of this mortgage, and the bonds thereby secured, there will exist a double lien and security for substantially the same amount or indebtedness in favor of the holders of said debt and lien, originally held by the State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and preserved and kept in force in the hands of the trustee, to whom the same is to be assigned as aforesaid, and of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, held as further collateral security therefor, and which double lien, as to a part thereof, will exist upon the same subject-matter, viz., the said railroad in Tennessee, with its appurtenances and equipment, and the other property in that State which is subject to the State lien, now it is hereby de-

clared, provided, granted, declared, and agreed that such double lien and security is intended to and shall exist, and that neither lien nor security shall prejudice the efficacy of the other; that the said State lien, held by assignment as aforesaid, may be enforced, and all rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in favor of the holders of such fourteen hundred bonds as further collateral security, as aforesaid, did not exist, and that the holders from time to time, of such fourteen hundred bonds, so transferred by way of further collateral security for such original debt, shall be entitled as fully and completely and effectually as if the said original lien and security for the original debts, a further security for which said fourteen hundred bonds are transferred, did not exist to their equal *pro rata* share and proportion in like manner with the holders of the other bonds, numbers (1401) fourteen hundred and one to (4700) four thousand seven hundred inclusive, to be issued under and secured by his mortgage, or such of such other bonds as may from time to time be outstanding, of the benefit of all the securities and liens provided by this mortgage, and of the proceeds and fruits thereof and of any foreclosure or enforcement of the same, including as well the mortgaged premises situate in Alabama and Mississippi as the other mortgaged premises, save and except that if, prior to making apportionment and distribution between the holders of the bonds secured by this indenture of mortgage, of the net proceeds of any foreclosure or other legal enforcement thereof, any net sum shall have been actually collected and realized in cash by means of legal enforcement of the said lien originally held by the State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, by giving proper credit wherefor, after first deducting therefrom all proper expenses and charges incurred in respect of the proceedings for such enforcement and collection, including the compensation of the said trustee, to whom the same shall be so assigned by said Adrian Iselin and Adrian Iselin, Junior, in respect thereof, the then unpaid amount of the said indebtedness of the railroad company, originally existing in favor of the State, and by it transferred over as aforesaid, and as collateral security for which said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be held as aforesaid, shall be reduced below the principal of such fourteen hundred bonds and the interest thereon accrued and unpaid at the time of such apportionment and distribution, having due regard to the circumstance that said bonds are payable in gold, and therefore reducing the amount of such net credits or deductions to the

value thereof in gold when collected and realized, then, and in such case, for the purposes of making such apportionment and distribution between the respective bond holders secured by this indenture of mortgage, of the net proceeds of such foreclosure or other legal enforcement of this mortgage, the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, instead of being reckoned at their face value, with their accrued and unpaid interest, shall be reckoned as being only for an amount equal to such reduced amount, computed as aforesaid, remaining unpaid at the time of such apportionment and distribution upon the said indebtedness of said railroad company, originally existing in favor of the State of Tennessee, and by it transferred over as aforesaid, and for which the said fourteen hundred bonds shall stand as security as aforesaid, and such apportionment and distribution between said fourteen hundred bonds and the other then outstanding bonds hereby secured shall be made accordingly ; and it being always understood, agreed, and provided that the double lien and security, as aforesaid, will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction of the same substantial debt, but that all payments actually received and realized in money, by means of either security, will and shall, to the extent of such actual payments realized, go in reduction of said original debt and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

And it is further declared and understood, That it will be made a part of the said arrangement between said railroad company and said Adrian Iselin and Adrian Iselin, Junior; that said Adrian Iselin and Adrian Iselin Junior, shall consent so far to reduce the amount of their said claim and demand against said railroad company and the lien and security therefor, under the said assignment and transfer from the State of Tennessee to them, as that, when they or their assigns shall have actually received and realized in cash, by net payments, as on account of the principal of the said indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars in United States gold coin, reducing currency realizations or payments to gold values as aforesaid, and shall likewise have actually received and realized in cash, by net payments, as on account of interest accruing at the rate of six per cent. per annum, payable semi-annually, on the first days of January and July, upon the said currency indebtedness of seventeen hundred and thirty-six thousand

nine hundred and six dollars and twenty-five cents, a sum equal to seven per cent. per annum, in United States gold coin, from the first day of July, eighteen hundred and seventy-seven, payable semi-annually, on the first days of January and July, upon such sum of fourteen hundred thousand dollars, gold, until payment and realization in cash, as aforesaid, of that principal sum, reducing currency realizations or payments to gold, as aforesaid, the residue of such currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and of the interest accruing thereon, from and after July first, eighteen hundred and seventy-seven, shall be thereupon given up, released, and discharged to the said railroad company: *Provided, however*, As a condition thereof, that said railroad company shall bear, pay, and discharge all the expenses and charges attendant upon the collection and receipt of such moneys on account of the principal or interest, or either of such indebtedness originally existing in favor of the State, and of all legal and other proceedings had or taken for the recovery thereof including the compensation of such trustee, in respect of such collection, receipt, and legal and other proceedings; and that this stipulation and agreement shall bind the representatives and assigns of said Adrian Iselin and Adrian Iselin, Junior, including the trustee to whom such original debt and lien is to be so assigned; and that, for the purposes thereof, all cash payments received and realized for principal or interest upon such fourteen hundred bonds, numbers one to fourteen hundred, inclusive, or any of them, by parties holding such bonds under transfer from said Adrian Iselin and Adrian Iselin Junior, shall be of like legal effect as if such moneys were received by said Adrian Iselin and Adrian Iselin Junior.

And it is hereby further provided, declared, granted, and agreed, by and between the parties hereto, that fourteen hundred and thirty-six thousand dollars, in amount, of the bonds issuable under, and intended to be secured by this indenture, that is to say, such bonds for one thousand dollars each, numbered from 1,401 (fourteen hundred and one) to 2,836 (twenty-eight hundred and thirty-six), both inclusive, are specially reserved and appropriated for the purpose of taking up and discharging the before mentioned twelve hundred and ninety-three thousand dollars, in amount, of now outstanding first mortgage bonds of said railroad company, issued under and secured by its said first mortgage, so called, dated May first, eighteen hundred and fifty-four, and said fourteen hundred and thirty-six bonds, so appropriated, are to be reserved in the hands of the trustee hereunder, unissued, until the same shall be actually applied to such purpose herein

next provided, to which end the said trustee is hereby authorized to, and shall, deliver over such reserved fourteen hundred and thirty-six bonds to the said railroad company, for use and negotiation by it, when and in proportion as the said railroad company shall deliver up to the said trustee, in a canceled condition, such twelve hundred and ninety-three now outstanding first mortgage bonds, the said trustee delivering over such reserved new bonds to said company, as aforesaid, at the rate of ten thousand dollars thereof for each nine thousand dollars of principal amount of such now outstanding first mortgage bonds so delivered over, in canceled condition, to said trustee. *And it is further provided, declared, granted, and agreed,* That a further amount of one million dollars of the bonds issuable under, and intended to be secured by, this indenture, that is to say, such bonds for one thousand dollars each, numbered from 2,837 (twenty-eight hundred and thirty-seven) to 3,836 (thirty-eight hundred and thirty-six), both inclusive, are specially reserved and appropriated for the purpose of taking up and discharging the before-mentioned one million dollars, in amount, of now outstanding second mortgage bonds of said railroad company, issued under and secured by its said so called second mortgage, dated January first, eighteen hundred and sixty-seven, and said one thousand bonds, so appropriated, are to be reserved in the hands of the trustee hereunder, unissued, until the same shall be actually applied to such purpose as herein next provided, to which end the said trustee is hereby authorized to, and shall deliver over such reserved one thousand bonds to the said railroad company, for use and negotiation by it, when and in proportion as the said railroad company shall deliver up to said trustee, in a canceled condition, such now outstanding second mortgage bonds, the said trustee delivering over such reserved new bonds to said company, as aforesaid, at the rate of one thousand dollars thereof for each one thousand dollars of principal of such second mortgage bonds so delivered to it in a canceled condition. *And it is hereby provided, declared, and agreed,* That said party of the second part must not, and shall not, permit to be issued, as certified or countersigned by it, the said twenty-four hundred and thirty-six bonds, numbers 1,401 (fourteen hundred and one) to 3,836 (thirty-eight hundred and thirty-six), which are reserved for taking up and providing for such outstanding first and second mortgage bonds, as aforesaid, except under and in conformity with the foregoing provisions and limits in respect thereof: *Provided, however,* That, in case said railroad company shall arrange with any holders of such now outstanding first and second mortgage bonds, for an

extension of time of payment thereon, and for giving, as additional security therefor, or for the indebtedness represented thereby, such new bonds hereby reserved for providing for the same, at rates not exceeding ten thousand dollars of such new bonds for each nine thousand dollars of such now outstanding first mortgage bonds, and not exceeding one thousand dollars of such new bonds for each one thousand dollars of such now outstanding second mortgage bonds, and for depositing both such old extended bonds and such new collateral bonds with some responsible trust company, in the city of New York, or other agreed depository, in said city, satisfactory to the party of the second part, under such agreement of trust, or otherwise, as may be fixed upon, with a view to avoiding the risk to the railroad company, and its other creditors, of a double payment upon such indebtedness thus extended and secured; the said party of the second part hereto shall be, and hereby is, authorized and required to give effect to such arrangement, and to deliver over, in accordance therewith, such reserved new bonds to such agreed trust company, or other depository, anything hereinbefore contained to the contrary notwithstanding.

It is further understood, declared, and provided, That, as to the issue and negotiation of the bonds issued under and secured by this mortgage, other than the twenty-four hundred and thirty-six bonds so appropriated and reserved for taking up said first and second mortgage bonds, the said party of the second part assumes no responsibility, and is to exercise no supervision, but is to countersign or certify and deliver over to the said railway company, for transfer or negotiation by it, without supervision, the said other bonds—that is to say, those numbered from one to fourteen hundred, inclusive, and those numbered from thirty-eight hundred and thirty-seven to four thousand seven hundred, inclusive.

And it is further provided, declared, and agreed, That the said party of the first part reserves to itself, and it shall have and possess, the right and privilege, anything hereinbefore contained to the contrary notwithstanding, to agree with the holders of all or any of the said now outstanding first mortgage bonds and second mortgage bonds, respectively, for an extension of time of payment thereof, at rates of interest not exceeding those which the said bonds now bear, and for preserving, keeping in full force and effect, and, if necessary or desirable, renewing, as a lien or liens prior and superior to the lien of this indenture of mortgage, the now existing lien or liens, and security of such first and second mortgages, respectively, upon the property and franchises covered thereby, for the unpaid amount of such bonds, including the in-

terest accruing subsequently to such extension ; and it shall be competent for the party of the second part hereto, as trustee hereunder, to execute any instrument or instruments expressing its concurrence, as trustee, in, or effectuating such preservation, keeping in force and renewing, of such lien or liens, as above authorized and provided, as a lien prior and superior to the lien of this mortgage : *Provided always*, And it is expressly understood, declared, and provided that nothing above contained is to authorize any interference with, or impairment, in any respect, of, the before-mentioned prior and paramount lien upon the said railroad in Tennessee, with its appurtenances and equipment, and the other property of said railroad company in that State, now held by said Adrian Iselin and Adrian Iselin, Junior, under transfer from the State of Tennessee, as aforesaid, and proposed to be transferred in trust for the special security of the holders of said fourteen hundred bonds, numbers one to fourteen hundred, inclusive, as aforesaid.

And, it is further provided, declared and agreed by and between the parties hereto, as follows, that is to say:

First. In case default shall at any time be made by the party of the first part in the due and punctual payment of any installment of semi-annual interest at any time becoming due and payable upon any of the said bonds, within the aggregate amount of forty-seven hundred thousand dollars, issued under the security of this mortgage as aforesaid, and if any such interest shall remain in arrear and unpaid for sixty days after demand thereof, then, and in such case, if, and when thereafter the holders, at the time being, of one-third in amount of the then outstanding bonds, issued under and entitled to the benefit of the security of this mortgage, shall by instrument or instruments executed by them respectively, or their attorneys in fact thereunto duly authorized, and delivered to party of the second part, or its successor or successors, as trustee hereunder, so elect, the principal sums secured by and payable upon all and singular the said bonds, within the aggreate amount of forty-seven hundred thousand dollars, issued under the security of this mortgage as aforesaid, with all arrears of interest thereon, shall become immediately due and payable, although the time for the payment of said principal, originally stipulated in said bonds, shall not yet have arrived, anything in the said several bonds contained to the contrary notwithstanding.

Second. Until the party of the first part shall have made some default in the payment of the principal or interest secured by or payable upon the said bonds hereby intended

to be secured, or upon some of such bonds, or some part of such principal or interest, or in the performance of some other of the covenants, stipulations and provisions on the part of the party of the first part in this indenture contained, the said party of the first part shall be entitled to continue in the possession, use and enjoyment of the said railroad and other mortgaged premises, properties, rights, interests, and franchises, and in receipt of the income, rents and profits thereof, and while the said party of the first part shall so remain in possession, and there shall be no such subsisting default in the payment of interest or principal, or in the performance of the stipulations, conditions and provisions on the part of the said party of the first part in this indenture contained, the said party of the second part, or its successor or successors in the said trust, shall have full power and authority, to be exercised in its or their own discretion, and not otherwise, to release from the lien and operation of these presents, in such manner as it or they may deem proper, any portion of the premises hereby mortgaged which may be appurtenant to the said mortgaged railroad, or any part thereof, including the branches or which may have been acquired or held for the uses or purposes thereof, but which, in the judgment of the said trustee, shall be no longer requisite for use in connection therewith, or which shall have been acquired or held for stations, depots, shops or other buildings, or for supplying fuel, gravel or other material, and which in the trustee's judgment shall be no longer requisite to be kept for such purpose, and likewise any lands not occupied by the track, which may become disused by reason of a change in the location of any station house, depot, shop or other building connected with the said railroad, and likewise any land occupied by the tracks, and adjacent to such station house depot, shop, or other building, which the said party of the first part, its successors or assigns, may deem it expedient to disuse or abandon by reason of such change, and likewise any part of the original line of track or roadway, and of the depot grounds, buildings or accommodations connected therewith, which may have been thrown out of or ceased to form part of the railroad at the time of such release, by reason of straightening *or alteration of the line of the road or otherwise; Provided, always*, that the power of release given by this article is designed to be exercised, and shall be exercised only in case of the said railroad company selling or contracting to sell the property so to be released, because of its being no longer required for the uses or purposes of said railroad, and requiring the same to be so released in order to give a perfect title to the purchaser or purchasers; *and provided fur-*

ther, that when such released premises shall have been thrown out of use, or ceased to be required, by reason of change of the line of the road, or change of depot grounds, buildings or other accommodations, the substitutes therefor shall be conveyed by appropriate deeds to the trustee, upon the trusts and for the uses and purposes of this indenture, before the giving of such release under the power contained in this article. *And provided further*, that as there are depot grounds in the city of Memphis of much greater extent and value than is required for the uses of said railroad, and which may be advantageously and properly sold and disposed of in aid of the general funds of the said railroad company and without procuring substitutes therefor, it is understood and provided that under the forgoing power the trustee may properly release such surplus depot grounds upon the same being sold and without receiving any substitute therefor. And the said trustee shall likewise have full power to allow the said party of the first part, its successors or assigns, from time to time, to sell and dispose of such portion of the equipment, machinery and implements which shall be at any time held or acquired for the use of said railroad, as shall have become worn out or unfit for such use; *provided, however*, that the same shall be adequately replaced by other equipment, machinery and implements, and all such other equipment, machinery and implements, which may be acquired in substitution as aforesaid, shall, by virtue and force hereof, become and be immediately upon the acquisition of the same, subject to the lien and operation of these presents, without any new conveyance or transfer or other act or ceremony whatever, but such new conveyance and transfer shall be given to the trustee or trustees, if it or they shall require or request the same.

Third. The said party of the first part doth hereby covenant, promise, and agree to and with the said party of the second part, and its successors in the trust hereby created, that while the said party of the first part shall remain in possession of the said railroad, it shall and will, from time to time, pay and discharge all taxes, assessments, and governmental charges, lawfully imposed upon the said railroad and branches, and other hereby mortgaged premises, or upon any part thereof, the lien of which might or could be held to be prior to the lien of these presents, so that the priority of this mortgage may be duly preserved, and that the said party of the first part shall not and will not do or suffer any matter or thing whatsoever, whereby the lien of this indenture of mortgage might or could be impaired, until the said bonds hereby secured, with all interest accrued thereon, shall be fully paid and satisfied.

Fourth. In case default shall be made in the payment of any semi-annual installment of interest, which may have accrued upon the said bonds hereby secured, or upon any of them, when such interest shall become or be due and be demanded, and if such interest or any part thereof shall remain unpaid and in arrear for the period of sixty days, after demand thereof, made according to the tenor of the coupon representing the same, or according to the tenor of the bond; or in case default shall be made in the due observance and performance of the covenant for further assurance hereinafter contained; or in case default shall be made by said railroad company in the payment of any taxes, assessments, or other governmental charges, which may be lawfully levied or imposed upon the said mortgaged railroad and premises, or any part thereof, and the lien whereof might or could be held prior to the lien of these presents, and if any such default as last above mentioned shall continue for the period of sixty days, after notification to the said railroad company of the existence of such unpaid taxes, assessments and other governmental charges, and request to said railroad company to make payment thereof shall have been made or given by the trustee under this mortgage, or by the holders of bonds secured hereby to the aggregate amount of not less than three hundred thousand dollars; or in case default shall be made in the payment of the principal of said bonds hereby secured, or any of such bonds, when such principal shall be due and payable, then, and in any and every such case of default made, in any of the particulars aforesaid, and provided such default be continued as aforesaid, where such continuance is above called for, the said party of the second part, or its successor or successors in the said trust, may, either personally or by agent or attorney, enter into and upon the said railroad and other mortgaged premises, properties, and rights, and have, hold, and possess the same, with the rights, privileges and franchises thereunto appertaining, and operate the said railroad, by such superintendents, managers, receivers, assistants, servants and agents as the said trustee shall deem proper, making, from time to time, all such repairs and replacements, and all such useful alterations, additions and improvements to the said railroad and other mortgaged property as the said trustee may deem expedient and judicious, and as the income of the said mortgaged premises coming to the trustee's hands shall be adequate to pay for. And it shall be lawful for the trustee or trustees, after entry and possession as above authorized, to collect and receive all fares, freights, issues, profits and income of the said railroad, and other mortgaged premises, and to deduct and retain, and

pay therefrom all the lawful expenses or charges of, or incident to, making such entry or obtaining possession of said premises, and the proper expenses and charges of or incidental to the holding, operating and managing the said railroad and premises, and conducting the business thereof, including the expense of all such repairs, replacements, alterations, additions and improvements as above authorized, and all payments which may be made or be due for taxes, assessments, or other charges or liens prior to the lien of these presents upon the said railroad and premises, or upon any part or parcel thereof, as well as just and reasonable compensation for the trustee's services in the premises, and for the services of such attorneys and counsel as may have been by it or them properly employed in respect thereof; and after making all such deductions and payments as aforesaid, the trustee or trustees shall apply the net residue of such fares, freights, issues, profits and income remaining in its or their hands to the payment, in the first place, of all overdue interest on the bonds hereby secured, or any of them, with the interest accrued on such amount of interest after default in its payment, in the order in which such interest shall have become due, ratably to the person holding the bonds or coupons, evidencing the right to such interest, and without discrimination or preference between them on account of the time of the actual issue of such bonds, and in the next place, to the payment of all such interest accruing or becoming due, during such possession of the trustee or trustees, in the order in which such interest shall fall due, ratably, and without any preference of one bond or coupon over another, save the said preference accorded to earliest maturing coupons, and if, in any six months of such possession by the trustee or trustees, after payment of all matured interest on the said bonds, a surplus of net income arising as aforesaid shall remain in the hands of the trustee or trustees, it shall be lawful for the trustee or trustees to pay over such surplus to the said party of the first part, its successors or assigns, or as any court of competent jurisdiction shall lawfully direct, and thereupon to deliver possession of said railroad and other mortgaged premises to the party of the first part, to be thenceforth possessed by it, subject to the lien of this mortgage, and to the trustees right again to take possession in case of future default entitling possession to be taken as hereinbefore specified.

Fifth. In case default shall be made in the payment of any semi-annual installment of interest, which may have accrued upon the said bonds within the aggregate amount of four million seven hundred thousand dollars hereby secured, or in the payment of such interest upon any of said bonds,

when such interest shall have become or be due, and be demanded; and if any such interest, or any part thereof, shall remain unpaid and in arrear for the period of sixty days after demand thereof made, according to the tenor of the coupon representing the same, or according to the tenor of the bond, or in case default shall be made in the payment of the principal of the said bonds hereby secured, or of any of such bonds, when such principal shall be due and payable, it shall be lawful for the said party of the second part, or its successor or successors in the trust hereby created, either after entry made upon the mortgaged premises as aforesaid, or without any such entry, either personally, or by attorney or agent, duly constituted therefor by the said trustee or trustees, to sell and dispose of all and singular the said railroad and other premises, properties, rights, and franchises, which shall then remain subject to the lien and operation of this indenture of mortgage, at public auction to the highest bidder, either in the city of New York, or in the city of Memphis, in the State of Tennessee, as the said trustee or trustees may, in its or their discretion, designate, and at such time as it or they may appoint therefor: *Provided, however*, And it is hereby declared and agreed, that preparatory to such auction sale, as aforesaid, the said trustee or trustees shall give public notice of the time and place, when and where the same is to be made, and of the property to be sold by advertisement in two newspapers, published in each of the States of Tennessee, Alabama, and Mississippi, and in two newspapers of good circulation, published in the city of New York, and that such advertisement shall be published in each of such newspapers, at least twice in each week, for the twelve successive weeks next previous to the day fixed for such sale, with the right, however, to the trustee or trustees, after such notice shall have been so published, to adjourn the sale so advertised, from time to time, in the discretion of the trustee or trustees, giving reasonable notice or notices of such adjournment or adjournments, and, after so adjourning, to make the sale at the time to which it may be finally adjourned. And it shall be lawful for the said trustee or trustees, and it or they are hereby expressly authorized and empowered, upon making any such auction sale of said mortgaged premises, and property, rights, and franchises, as above authorized, to make and deliver to the purchaser or purchasers thereof, at such sale, upon his or their paying the purchase money therefor, a good and sufficient deed or deeds of conveyance in the law of the same, which auction sale and the deed or deeds therefor, made as above authorized, it is hereby granted, declared, and agreed, shall be good and valid in the law, and shall operate to vest in the grantee or

grantees in such conveyances the said railroad and branches and other mortgaged premises, properties, rights, and franchises, in fee simple and absolutely, and such deed or deeds shall operate to foreclose all equity of redemption of the said party of the first part, and its successors or assigns, and shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and against any and all persons or corporations claiming or to claim such premises, properties, rights, and franchises so sold and conveyed, or any part thereof, by, from, through, or under the said party of the first part, or its successors or assigns.

And it is further provided, declared, and agreed, that from the proceeds of such sale made as aforesaid, the said trustee or trustees shall be entitled, in the first place, to deduct and retain or pay for all proper charges or expenses of or incident to such advertisement, foreclosure, and sale, and conveyance, including attorneys' and counsels' fees, and any and all unreimbursed advances, expenses, charges, and liabilities which may have been properly made or incurred by such trustee or trustees in maintaining or operating the said railroad, or in managing the business of the same while it shall have remained in the trustees' possession, or in arranging for and completing the sale aforesaid; and also all payments which may have been made by the trustee or trustees for taxes and assessments, and for charges or liens prior to the lien of this indenture, if any such there shall be, on the said railroad and premises so sold, or any part thereof, as well as the just and reasonable compensation for the services of such trustee or trustees in the premises, and the said trustee or trustees shall apply the residue of the proceeds of such sale, after the deductions and payments above authorized to be first made thereout, to the payment of the principal of the said bonds within the amount of four millions seven hundred thousand dollars, by this mortgage secured, or intended so to be, or of such of said bonds as may at that time remain outstanding and unpaid, whether such principal shall or shall not, by the terms or conditions of said bond, have then fallen due and become presently payable, and likewise to the payment of the interest which shall have accrued up to that time upon the principal of the said bonds hereby secured, and which shall remain unpaid and properly payable with any interest accrued on such interests after default, without discrimination or preference as between principal and interest, but ratably according to the aggregate amount of such unpaid principal and accrued and unpaid interest, which payments shall be made to the persons holding respectively the bonds and coupons evidencing the right to

such principal and interests, without any discrimination or preference between them on account of the time of the actual issuing of the bonds or of the time of maturing of the interest or principal, and always subject to and in accordance with the special provisions hereinbefore contained relating to the said fourteen hundred of such bonds, numbers one to fourteen hundred, inclusive; and it being understood and hereby declared and agreed that upon any sale of said railroad and other mortgaged premises which may be made as aforesaid, or upon any sale thereof made under or by virtue of the judgment or decree of any Court of competent jurisdiction, rendered in any suit or proceeding for the enforcement or foreclosure of the lien created by this indenture of mortgage, the principal of all the then outstanding bonds secured by these presents shall become and be immediately due and payable. And it is further declared and agreed that the receipt of the trustee or trustees, who shall make the sale hereinbefore authorized, shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not after paying such purchase-money and receiving such trustee's receipt therefor be obliged to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication, or non-application of such purchase-money by the trustee or trustees.

And the said party of the first part doth hereby further covenant that it will, if and when thereunto requested, make, execute, and deliver such deeds or other instruments as shall be reasonably advised by counsel to confirm and assure such title and ownership as aforesaid to such purchaser or purchasers at such sale made as above authorized, so as fully to effect said sale.

And the said party of the first part, for itself, its successors, and assigns, hereby agrees to waive, and doth hereby absolutely and irrevocably waive and relinquish, the benefit or advantage of any and all valuation, stay, appraisement, extension or redemption law or laws, now existing, or which may hereafter be passed by either of the States of Tennessee, Alabama, and Mississippi, which but for this provision, agreement, and waiver, might be applicable to the sale hereinbefore authorized to be made by the trustee or trustees of the said railroad and other mortgaged premises, or to any judicial sale which may be made of said mortgaged railroad and premises, or any part thereof, under and in virtue of the judgment or decree of any competent court in a suit insti-

tuted for the foreclosure of this mortgage or for enforcement of the lien by this indenture created, and the said party of the first part, for itself, its successors, and assigns, agrees to waive, and doth hereby irrevocably waive, any and all right of redemption which it might or could otherwise have or be entitled to, under any present or future law of either of the three States of Tennessee, Alabama, and Mississippi, upon or after or in respect of any sale of the said hereby mortgaged premises, properties, rights, and franchises, or any part thereof, which may be made either by the trustee or trustees under the power hereinbefore contained, or as a judicial sale under order or decree of a court in a suit for foreclosure of this mortgage or enforcement of its lien as aforesaid, and the said party of the first part hereby covenants that it will not in any manner set up or seek to take the benefit or advantage of any such present or future valuation, stay, appraisement, extension, or redemption law, to prevent or hinder or delay the absolute and irredeemable sale of said mortgaged premises, properties, rights, and franchises, as hereinbefore authorized to be made by the trustees, or as might, but for such law, be directed or decreed by a court of competent jurisdiction.

And it is hereby further provided, declared, and agreed, That in case of such auction sale as hereinbefore authorized being made by the party of the second part, or its successor or successors in the said trust, or in case of any judicial sale being made of the said railroad and other premises, properties, rights, and franchises hereby mortgaged, or any part thereof, in enforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for and payment of the purchase-money bidden at such sale, to turn in and use toward the payment of such purchase-money, any of the bonds or coupons held by such purchaser or purchasers to or toward the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds or coupons for such purpose at such sums as shall be payable out of the net proceeds of such sale to such purchaser or purchasers, as holder or holders of such bonds or coupons, for his or their just share or proportion, in that character, of such net proceeds of sale upon due apportionment of and accounting concerning such net proceeds, due receipts and acknowledgements being thereupon given by the holders of such bonds or coupons for the amount thus realized thereon, by means of turning in and using the same as aforesaid, and the said bonds or coupons being either delivered up to the person or persons making the sale, and entitled to receive payment of the purchase money, or due indorsement being made thereon of the amount so realized on account thereof.

Sixth. Whenever there shall have occurred such continued default in the payment of either interest upon or principal of the bonds secured by this indenture of mortgage, or upon or of any of such bonds as in virtue of the preceding provisions of this indenture shall entitle the trustee or trustees to proceed to advertise and sell the mortgaged premises as aforesaid, it shall be obligatory upon the said trustees, upon being thereunto requested by the holders of so many as one-third in amount of the then outstanding bonds secured by this indenture, by an instrument or instruments in writing to such effect, executed by such bondholders or their duly authorized attorneys in fact, to proceed either to assert the power of sale hereinbefore conferred upon the trustee, or to institute and carry on, with the advice of competent attorneys and counsel, legal proceedings in a court or courts of competent jurisdiction, for the enforcement and protection of the rights of the trustees and the bond holders in the premises, and for foreclosure of this mortgage, enforcement of the lien thereof, and a judicial sale of the said mortgaged premises and properties, rights and franchises and immunities, it being hereby expressly declared, granted, agreed and provided that the right to proceed by suit or suits, or other appropriate legal proceedings, in a court or courts of competent jurisdiction, shall exist, and is and shall be in nowise prejudiced by the power of entry or by the power of sale, or any of the other provisions hereinbefore contained, and it shall, in the event of such request by bondholders as aforesaid, be, in the discretion of the trustee or trustees, under the advice of competent counsel, to adopt and pursue such one of the two courses above mentioned as to such trustee or trustees shall seem most expedient: *Provided, however*, and it is a condition of the obligations of the trustee or trustees to adopt either course, or to take any steps for the foreclosure or enforcement of this mortgage, or any steps for entry into possession of the mortgaged premises, under the power in that behalf hereinbefore contained, that the trustee or trustees, before actually taking any such steps or proceedings of any kind, shall have the right to require the bondholders calling upon it or them so to do, to furnish to it or them reasonable indemnity for, and provision for the payment, as and when required, of the costs, charges, and expenses of or incident to such steps or proceedings.

Seventh. The trustee under this indenture, or its successors, may at any time be removed from the trust, by instrument in writing under the hands and seals of the holders of a majority in amount of the then outstanding bonds secured hereby, or their attorneys in fact thereunto authorized.

And it is further declared, provided and agreed, that in case a vacancy shall at any time exist in the trusteeship hereunder, by reason of removal, death, or mental incapacity of the trustee or trustees for the time being, or either of them, or of the resignation of any such trustee accepted, in writing, by a majority in interest of the bondholders or by a court of compent jurisdiction, or of a vacancy in such trusteeship otherwise lawfully occurring and existing, a majority in amount of the holders of the then outstanding bonds, issued under and secured by this indenture of mortgage, shall have the right and power, by instrument in writing under hand and seal, to appoint a new trustee or trustees, to fill such vacancy; and, in case the vacancy shall be caused by the party of the second part, or any corporation appointed in its place ceasing to be trustee, such vacancy may be so filled by the bondholders by the appointment, as trustee, of another corporation having lawful power to execute such trust, or of one or more individual trustees; and until the appointment of a trustee or trustees, to fill any vacancy, shall have been made by the majority in amount of the said bondholders under the power in that behalf above contained, the board of directors, for the time being, of the party of the first part may appoint a new trustee or trustees to fill such vacancy for the time being; and in case of any vacancy being filled by such appointment by the board of directors, it shall be competent for any court of equitable powers, having jurisdiction in the premises, upon the application of any of the bondholders holding not less than five hundred thousand dollars in amount of such bonds, to annul such appointment, and appoint a trustee or trustees in place of the trustee or trustees so appointed by the directors, to hold the trust for the like term as he or they would have held the same under the appointment of the said directors, but no longer, and if the directors shall omit to fill the vacancy it may be filled by a court in the manner, and with the effect last above provided and upon the like tenure.

And in case of any vacancy occurring and not being filled by a majority in amount of the bondholders, under the preceding povisions in that behalf, it shall be the duty of the president of the said railroad company to call a meeting, on a notice of at least three weeks, published once a week, for three successive weeks, in two newspapers, of good circulation, published in the city of New York, of the bondholders, to be held in the city of New York, to appoint a trustee or trustees to fill the vacancies so existing, or which shall have existed; but nevertheless, such vacancy may be filled without waiting for and irrespective of any such meeting, by instrument or concurrent instruments, under hand and seal of

a majority in interest of such bondholders, and any appointment of a trustee or trustees to fill such vacancy existing or which shall have existed, whether made at such meeting, called as aforesaid, or otherwise, provided it be under the hands and seal of a majority in amount of the holders of the then outstanding bonds hereby secured, or their attorneys in fact thereunto authorized, but not otherwise, shall be valid and effectual, and shall supersede any previous appointment of a trustee, to fill such vacancy, which may have been made by the board of directors of the said company, or by a court under any of the preceding provisions hereof.

And it is hereby provided declared and agreed, that the due appointment of a trustee or trustees, in any of the modes herein provided, shall be effectual to vest in such trustee or trustees the appropriate estate, rights, powers, and duties as herein provided in that behalf, without any new deed or conveyance; but, nevertheless, the said railroad company hereby covenants, in any and every such case, to make and execute, upon request, any such deeds, conveyances, or assurances as may be appropriate for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers, and duties, and in every case of resignation of a trustee, the resigning trustee shall, if requested, make and execute such deeds, conveyances, or assurances to his successor.

And it is hereby further provided, declared, and agreed, that whenever, and as often as any occasion shall arise in which the action of a majority in amount of the said bondholders, in pursuance of any power or provision herein contained, shall be called for or be appropriate, a meeting or meetings, from time to time, of such bondholders, to be held in the city of New York, may be called by the trustee under this indenture, or by such bondholders holding bonds to an aggregate amount of five hundred thousand dollars, upon notice by advertisement, published for not less than three weeks successively, at least once in each week, in two newspapers published in the city of New York, and that the expenses of calling, advertising and holding any such meeting, and of any adjournment thereof, shall be a claim against and charge upon the trust funds or property held in trust hereunder, and shall be paid by the trustee out of any trust funds in its or their hands.

Eighth. The trustee or trustees hereunder shall be entitled to receive reasonable compensation for all services performed by it or them in or about the execution of the trusts hereby created. *And it is hereby further provided, declared, and agreed*, that in case of the trustee or trustees hereunder entering upon and taking possession of the said railroad

and other mortgaged premises or property in consequence of default made by said railroad company, under or in pursuance of the power and authority in that behalf hereinbefore conferred upon the trustees, it shall be lawful and competent for such trustee or trustees to employ an agent or agents for the performance of any such duties, acts, and things in and about taking and maintaining such possession, and using, operating, and managing the said railroad, and collecting the income, earnings, and profits thereof, and making repairs and improvements, as above authorized, as such trustee or trustees may deem fit, and for the performance of any other acts in and about such possession and management, the performance whereof can be properly delegated to an agent; and that such trustee or trustees, provided it or they shall have exercised reasonble prudence and care in the selection and employment of such agent or agents for any such purposes, shall not be responsible for losses or damages in the premises caused by the act, neglect, or default of such agent or agents. But this provision is not intended, and shall not be construed, so as to exempt the trustee or trustees, in case of sale being made of the said mortgage premises, from due responsibility to the bond holders hereby secured for the application of the proceeds of such sale received, either by the trustee or trustees, or by any agent or agents whom it or they may see fit to employ to receive such proceeds of sale.

Ninth. And this indenture further witnesseth that the said party of the first part, for the consideration aforesaid, has covenanted, promised, and agreed, and does hereby covenant, promise, and agree to and with the said party of the second part, and its successor or successors in the trust hereby created, that the said party of the first part and its successors shall and will well and truly pay or cause to be paid unto the respective holders of the said bonds for four million seven hundred thousand dollars, issued under and secured by this mortgage, the principal thereof and the interest thereon, as the same shall from time to time become payable, according to the tenor of said bonds and the coupons accompanying the same respectively.

And the said party of the first part, for the consideration aforesaid, doth hereby covenant and agree to and with the said party of the second part and its successors, as trustee, and likewise to and with the holders, from time to time, of the several bonds issued under and secured by this indenture, that the said party of the first part its successors and assigns, shall and will, from time to time, and at all times hereafter, upon reasonable request, make, do, execute, acknowledge, and deliver all such further acts, deeds, con-

veyances, and assurances in the law, for the better and more effectually assuring, conveying, and confirming unto the said trustee and its successors or successor in the trust hereby created upon the trusts, and for the uses and purposes herein expressed or intended, all and singular the railroad equipment, premises, properties, rights, and franchises hereby mortgaged or conveyed in trust, or agreed, or purporting or intended so to be, whether now owned or possessed by or vested in said party of the first part, or subsequently acquired by or vested in it, as by such trustee or trustees or bond holders, under the advice of counsel, shall be reasonably advised, devised, or required.

And whereas, it is intended that the said party of the second part hereto, shall be the trustee to whom in trust for the security and benefit of the holders of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be assigned by Adrian Iselin and Adrian Iselin, Junior, the above mentioned indebtedness of the said railroad company originally existing in favor of the State of Tennessee, and the State's lien therefor assigned to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, it is hereby declared and agreed that such circumstance of the said party of the second part being so made trustee of such special trust created, and special additional security so given for the special, separate, and exclusive benefit of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall not be deemed in anywise inconsistent with the trusteeship or position of the said party of the second part as trustee hereunder for all said bond holders; and such trusteeship of the party of the second part hereunder shall in nowise detract from, affect, or impair the special and exclusive rights and securities of the holders of said fourteen hundred bonds held by them through the trusteeship of the party of the second part hereto, for their separate use and benefit under such trust created by said Adrian Iselin and Adrian Iselin, Junior.

And the said party of the second part doth hereby accept the trusts hereby created. And the said party of the second part, as trustee hereunder, and its successors, are hereby released from executing the bond required from trustees by the laws of Tennessee, Alabama, or Mississippi respectively, and from giving any bond or security as trustee or trustees under this indenture.

In witness whereof, The said party of the first part, in pursuance of a resolution of its board of directors, hath hereto affixed its corporate seal, and caused the same to be attested by its president and secretary; and the said party of the sec-

ond part, in pursuance of authority of its board of directors, hath hereto affixed its corporate seal, and caused the same to be attested by its president and secretary, the day and year first above written.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
[SEAL.] *By* R. T. WILSON,
President.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
By S. R. CRUSE,
Secretary.

FARMERS' LOAN AND TRUST CO.,
[SEAL.] *By* R. G. ROLSTON,
President.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, That on this 20th day of August, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Tennessee, in and for the State of New York, residing in said city of New York, personally appeared Richard T. Wilson, to me personally known, and known to me to be the president of the Memphis and Charleston Railroad Company, the grantor described in and who executed the foregoing instrument, and being by me duly sworn, did personally depose and say: That he was such president of the said Memphis and Charleston Railroad Company, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority—and the said Richard T. Wilson, president of said Memphis and Charleston Railroad Company, the bargainor in the foregoing instrument, with whom I am personally acquainted, also acknowledged that he executed the foregoing instrument for the purposes therein contained as his own act and deed as such president, and the act and deed of said company. And on the same day, before me, also personally appeared Rosewell G. Rolston, to me personally known, and known to me to be the president of the Farmers' Loan and Trust Company, of New York, and being by me duly sworn, did depose and say: That he was the president of said Farmer's Loan and Trust Company, New York, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of that company, is the corporate seal of that company, and was thereunto affixed by said authority of said corporation, and that he subscribed his name thereto as such president by like authority. And the said Rosewell G. Rolston, the president of

the said Farmer's Loan and Trust Company, of New York, trustee in the foregoing instrument named, with whom I am personally acquainted, also acknowledged that he had executed the foregoing instrument for the purpose therein contained as his own act and deed as such president, and the act and deed of said company.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 20th day of August, A. D. 1877.

[SEAL.] CHARLES NETTLETON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, That on this 20th day of August, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Mississippi, in and for the State of New York, residing in said city of New York, personally appeared Richard T. Wilson, to me personally known, and known to me to be the president of the Memphis and Charleston Railroad Company, the grantor described in, and who executed the foregoing instrument; and, being by me duly sworn, did personally depose and say: That he was such president of the said Memphis and Charleston Railroad Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and was thereto affixed by said authority of said corporation, and that he subscribed his name thereto as such president by like authority; and the said Richard T. Wilson also acknowledged that he signed, sealed, and delivered the foregoing instrument as his act and deed as such president, and the act and deed of said company. And on the same day before me also personally appeared Rosewell G. Rolston, to me personally known, and known to me to be the president of the Farmer's Loan and Trust Company of New York, and, being by me duly sworn, did personally depose and say: That he was the president of the said Farmers' Loan and Trust Company of New York; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of that company, is the corporate seal of that company, and was thereto affixed by said authority of said corporation, and that he subscribed his name thereto as such president by like authority; and the said Rosewell G. Rolston also acknowledged that he signed, sealed, and delivered the foregoing instrument as such president, as the act and deed of said company, and his own act and deed as such president.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 20th day of August, A. D. 1877.

[L. S.] CHARLES NETTLETON,
Commissioner for Mississippi in New York,
117 Broadway, New York City.

STATE OF NEW YORK,
City and County of New York. } ss.:

Be it remembered, that on the 20th day of August, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Alabama, in and for the State of New York, residing in said city of New York, personally appeared Richard T. Wilson, to me personally known, and known to me to be the president of the Memphis and Charleston Railroad Company, the grantor described in, and who executed the foregoing instrument, and being by me duly sworn, did personally depose and say: That he was such president of the said Memphis and Charleston Railroad Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority; and the said Richard T. Wilson, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed as such president, and the act and deed of said company. And on the same day before me also personally appeared Rosewell G. Rolston, to me personally known, and known to me to be the president of the Farmers' Loan and Trust Company of New York, the trustee described in, and who executed the foregoing instrument, and being by me duly sworn, did personally depose and say: That he was such president of the said Farmers' Loan and Trust Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority. And the said Rosewell G. Rolston, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed as such president, and the act and deed of said company.

In witness whereof, I have hereunto set my hand
[L. S.] and affixed my official seal, this 20th day of August, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Alabama in New York,
117 Broadway,
New York City.

Exhibit No. 2.

THE TRIPARTITE AGREEMENT BETWEEN A. ISELIN AND A. ISELIN, JUNIOR, FARMERS' LOAN AND TRUST COMPANY, AND THE MEMPHIS AND CHARLESTON RAILROAD COMPANY, AUGUST 21, 1877.

AN INDENTURE, Made this twenty-first day of August, eighteen hundred and seventy-seven, between Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the city of New York, parties of the first part; The Farmers' Loan and Trust Company, a corporation created by the laws of the State of New York, and located in the city of New York, party of the second part, and The Memphis and Charleston Railroad Company, a corporation created and organized by and under the laws of the respective States of Tennessee and Alabama and Mississippi, party of the third part.

Whereas, The said The Memphis and Charleston Railroad Company heretofore became indebted to the State of Tennessee for or in respect of the bonds of that State, loaned or advanced or delivered to or in aid of the said railroad company, under and in pursuance of the general internal improvement laws and other laws of that State, and for the amount of which indebtedness the State of Tennessee held a statutory first lien in the nature of a mortgage on all that part of the railroad, as well branch as main line of the said The Memphis and Charleston Railroad Company, which is situated in the said State of Tennessee, with the lands and premises thereunto appertaining, and the rolling stock or equipment and other appurtenances thereof, and the other property of said railroad company, situated in the said State of Tennessee.

And whereas, Under and in pursuance of and in accordance with the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "an Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, and the other laws of said State of Tennessee in that behalf, the said The Memphis and Charleston Railroad Company and the board of directors thereof heretofore gave their approbation and consent in writing, that the said Adrian Iselin and Adrian Iselin, Junior, might pay, so far as the State of Tennessee was concerned, the amount of the said indebtedness of the said railroad company to said State in the bonds of the said State of Tennessee, and coupons of such bonds at par, as provided for by the laws of the said

State of Tennessee in that behalf, and that they might thereby and thereupon become substituted and entitled to all the liens against said company for the payment of said debt, which the said State of Tennessee had by law, as by the sixth section of the Act aforesaid is provided; and further, that the said Adrian Iselin and Adrian Iselin, Junior, should thereupon, as provided for by the seventh section of the act aforesaid, be entitled to have and to hold all the lien or liens which the said State of Tennessee had upon said railroad or its property, and should have the same right to enforce the same which the said State of Tennessee had, the object and intent being and being thereby declared to be to place the said Adrian Iselin and Adrian Iselin, junior, so paying the amount of the debt of the said railroad company to the State in the same position and with the same rights which the said State of Tennessee had previous to and before the said payment, and with full power to enforce the same, and on or about the twenty-fifth day of July, eighteen hundred and seventy-seven, certified copies of the resolutions of the Board of directors of the said railroad company to the effect aforesaid, and an instrument of consent and agreement to the effect aforesaid, executed by the said railroad company under its corporate seal, were duly filed with the treasurer of said State of Tennessee, copies of which resolutions and of which instrument so executed by said railroad company under and in pursuance thereof, under said company's corporate seal, are as follows, that is to say: In the copy of the instrument hereinafter executed by said company under its seals, the signatures and seal do not appear, but the same were duly affixed thereto, the instrument so executed being in the form and to the effect set forth in the said resolution authorizing the same.

I, Marshal T. Polk, Treasurer of the State of Tennessee; do hereby certify that Adrian Iselin and Adrian Iselin, junior, composing the firm of A. Iselin & Company, have this day, in pursuance of the sixth and seventh sections of the act of the legislature of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25, 1869, filed in my office certified copies of certain resolutions of the board of directors of the Memphis & Charleston Railroad Company, and a certain written consent and agreement of said Memphis and Charleston Railroad Company under its corporate seal, duplicate copies of which resolutions and consent and agreement are hereunto annexed.

Given under my hand and official seal this twenty-fifth day of July, eighteen hundred and seventy-seven.

MARSHALL T. POLK,
Treasurer.

At a meeting of the board of directors of the Memphis and Charleston Railroad Company, held in the city of Memphis, on the thirty-first day of May, eighteen hundred and seventy-seven.

Present—R. T. Wilson, President ; C. M. McGhee, Vice-President ; Messrs. J. R. Mosby, Jerome Hill, W. S. Hastie, Napoleon Hill, W. W. Garth, J. D. Rather, and George P. Bierne. Upon motion of Mr. Napoleon Hill, duly seconded, it was resolved, all the members of the present board voting in favor thereof, except George P. Bierne, as state in the three resolutions next following, viz. :

Resolved, That this board hereby gives its consent and approbation, and that of the company, that Adrian Iselin and Adrian, Iselin, junior, composing the firm of A. Iselin & Company, of the city of New York, may, so far as the State of Tennessee is concerned, pay this company's indebtedness to the State of Tennessee for or in respect of the Tennessee State bonds heretofore loaned or delivered to or in aid of this company, and of which the State has a lien in Tennessee State bonds or coupons thereof, as provided for by the act of the legislature of Tennessee in that behalf, approved February 25, 1869, and the acts amendatory thereof, or supplementary thereto, and that by such payment said A. Iselin & Company shall acquire and be entitled to the rights, liens, and securities in that behalf, provided for by the sixth and seventh seclions respectively of the said act of February 25, 1869.

Resolved, That the president and secretary of this company be and are hereby authorized and directed to execute, under this company's corporate seal, and with their signatures as such president and secretary, an instrument substantially of the form and effect following, in duplicate, and deliver the same to said A. Iselin & Co., one copy thereof being intended to be filed with the State treasurer of Tennessee, as follows, that is to say :

Know all men by these presents, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee for or in respect of the amount of the bonds of the aid State which were loaned or advanced or delivered to or in said of said railroad company under the general internal improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds a lien upon said company's railroad in the State of Tennessee, and other property of said company, as provided by law, which indebtedness for the amount of bonds of said State of Tennessee, originally loaned, issued or delivered to or in aid of said railroad company, and for the amount of certain Tennessee State bonds

issued to fund or provide for certain interest upon those bonds, which during a certain period the said railroad company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the railroad company to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

Now, this instrument, which is executed by the said The Memphis and Charleston Railroad Company, under its corporate seal, in pursuance of a resolution of the board of directors of said railroad company specially authorizing the same, duly passed at a meeting of said board duly held on the thirty-first day of May, instant.

Witnesseth, That the said The Memphis and Charleston Railroad Company, and the board of directors of said company, respectively have given and do give its and their consent and approbation, under and in pursuance of the act of the legislature of the State of Tennessee, entitled "an act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the acts of such legislature in amendment thereof or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the city of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that hereinbefore referred to; and that such payment of such indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee, or coupons of such bonds, at par, as allowed by the laws of said State in that behalf; and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, to be substituted and entitled to all the liens against said railroad company, and against its property, for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness,

may receive from the governor and secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above mentioned legislative act of the twenty-fifth day of February, eighteen hundred and sixty nine. And under and in pursuance of the seventh section of the act last above mentioned, the said The Memphis and Charleston Railroad Company, and the board of directors of said company, do hereby further respectively assent and agree that said Adrian Iselin and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as said State is concerned, in the bonds or coupons of said State as aforesaid, may and shall, upon filing with the treasurer of the State of Tennessee this instrument, executed under the corporate seal of said company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the railroad of said Memphis and Charleston Railroad Company, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being or hereby declared), in accordance with the seventh section of the said act of the twenty-fifth day of February eighteen hundred and sixty-nine, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said railroad company, in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

In witness whereof, the said The Memphis and Charleston Railroad Company, in pursuance of a resolution of its board of directors as aforesaid, hath hereunto affixed its corporate seal, and caused these presents to be executed on its behalf by its president and secretary, the thirty-first day of May, eighteen hundred and seventy-seven. And this board hereby agrees and gives its consent and approbation to every thing stated or contained in the instrument above directed to be executed and delivered to said A. Iselin & Co.

Resolved, That the secretary be directed to furnish to A. Iselin & Company, in duplicate, copies certified by him of these three resolutions.

I hereby certify that the foregoing is a true copy from the minutes of a meeting of the board of directors of the Memphis and Charleston Railroad Company, held in the city of Memphis, Tennessee, on the thirty-first day of May, eighteen hundred and seventy-seven.

[SEAL.] S. R. CRUSE.

Secretary and Treasurer of the Memphis and Charleston R. R. Co.

Know all men by these presents, that whereas the Memphis and Charleston Railroad Company, is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State, which were loaned or advanced or delivered to or in aid of said railroad company, under the general internal improvement laws of said State, or other laws of said State, in that behalf and for which indebtedness of said railroad company the said State holds a lien upon said company's railroad in the State of Tennessee, and other property of said company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued, or delivered to or in aid of said railroad company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which, during a certain period, the said railroad company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the railroad company to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

Now, this instrument, which is executed by the said The Memphis and Charleston Railroad Company under its corporate seal, in pursuance of a resolution of the board of directors of said railroad company, specially authorizing the same, duly passed at a meeting of the said board, duly held on the 31st day of May, instant.

Witnesseth that the said the Memphis & Charleston Railroad Company, and the board of directors of said company respectively, have given, and do give its and their consent and approbation, under and in pursuance of the act of the legislature of the State of Tennessee, entitled, "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed April 25, 1869, and the acts of such legislature in amendment thereof, or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the city of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State,

which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that hereinbefore referred to, and that such payment of said indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee, or coupons of such bonds at par, as allowed by the laws of said State, in that behalf, and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, be substituted and entitled to all the liens against said railroad company and against its property for the payment of such indebtedness that the State of Tennessee had or has by law ; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness may receive from the governor and secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above-mentioned legislative act of February 25, 1869.

And under and in pursunnce of the seventh section of the act last above mentioned the said The Memphis and Charleston Railroad Company, and the board of directors of said company, do hereby further respectively assent and agree that said Adrian Iselin and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as the said State is concerned, in the bonds or coupons of said State, as aforesaid, may and shall, upon filing with the treasurer of the State of Tennessee this instrument, executed under the corporate seal of said company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the railroad of said Memphis and Charleston Railroad Company, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being so hereby declared) in accordance with the seventh section of the said act of February 25. 1869, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said railroad company, in the same position and with the same rights which the State of Tennessee had previous to and before said payment, and with full power to enforce the same.

In witness whereof, the said The Memphis and Charleston Railroad Company, in pursuance of a resolution of its board of directors, as aforesaid, have hereunto affixed its corporate seal, and caused these presents to be executed

on its behalf by its president and secretary, the thirty-first day of May, eighteen hundred and seventy-seven.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
By R. T. WILSON,
President.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
[L. S.] *By* S. R. CRUSE,
Secretary and Treasurer.

STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me. Hunsdon Cary, a notary public, in and for said county, duly commissioned and qualified, S. R. Cruse, secretary and treasurer of the Memphis and Charleston Railroad Company, who is personally known to me, both in his person and as such secretary and treasurer, who, being duly sworn, deposes and says, and acknowledges that he executed the foregoing instrument, being acquainted with its contents, for the purposes therein stated, in the interest and on the behalf of the Memphis and Charleston Railroad Company, and under authority granted him by resolution of the board of directors of said company, passed at a meeting of said board of directors on the thirty-first day of May, eighteen hundred and seventy-seven.

Witness my hand and notarial seal, this June ninth, A. D. eighteen hundred and seventy-seven.

HUNSDON CARY, *Notary Public.*

And whereas, thereupon, the said Adrian Iselin and Addrian Iselin, Junior, with such consent and approbation of the said railroad company, and of its board of directors, and in the manner and with the effect so consented to, and under and in pursuance of, and in accordance with, the said sixth and seventh sections of the aforesaid acts of February 25, 1869, and the other laws of the said State of Tennessee in that behalf, paid to the said State of Tennessee, in the bonds of said State, and coupons of such bonds at par, as allowed by law, the amount of the aforesaid indebtedness of the said The Memphis and Charleston Railroad Company to the said State of Tennessee for or in respect of the amount of the bonds of the State of Tennessee, which, under the general improvement law, passed February 11, 1852, and the other acts of the legislature of that State, were originally loaned, issued, or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds, issued to fund or provide for certain interest upon those bonds before mentioned, which,

during a certain period, the said railroad company failed to provide for the aggregate amount of principal of said State bonds, including those so issued for funding interest, after deducting and giving credit for the amount theretofore paid on account by the said railroad company to the sinking fund, being one million six hundred and seventy-one thousand nine hundred and sixteen dollars twenty-five cents ($1,671,916.25), and there being also due by said railroad company to the State for interest accrued thereon up to the first day of July, eighteen hundred and seventy-seven, the sum of sixty-four thousand nine hundred and ninety dollars ($64,990), making the whole amount of such indebtedness of said railroad company to the said State of Tennessee, and for which the said State held a lien as aforesaid, the sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,-906.25), as of the first day of July, eighteen hundred and seventy-seven, and so much whereof as was principal bore interest from that date at the rate of six per cent. per annum, whereupon the said Adrian Iselin and Adrian Iselin, Junior, under and in pursuance of, and in accordance with, the statutes of the said State of Tennessee, in that behalf became assignees of the said indebtedness of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,730,906.25), owing from the said The Memphis and Charleston Railroad Company to the said State of Tennessee, with the interest thereon accrued and to accrue from and after the first day of July, eighteen hundred and seventy-seven, and became substituted and entitled to all liens against said railroad company, for the payment of said debt that the said State of Tennessee had by law and became entitled, as provided by the seventh section of the act aforesaid, to have and to hold all the lien or liens which the said State of Tennessee had upon the said railroad or its property, and the same right to enforce the same which said State of Tennessee had, and said Adrian Iselin and Adrian Iselin, Junior, under and in pursuance of the said seventh section of the act aforesaid, were thereupon placed in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same; and thereupon the said Adrian Iselin and Adrian Iselin, Junior, received from the governor and secretary of state of the State of Tennessee their certificate in writing, as provided for by the said sixth and seventh sections of the act aforesaid, a copy of which said certificate is as follows, that is to say:

We, James D. Porter, governor of the State of Tennessee,

and Charles N. Gibbs, secretary of state of the State of Tennessee, do hereby certify that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the city of New York, have this day filed with the treasurer of the State of Tennessee the written consent of the board of directors of the Memphis and Charleston Railroad Company, and likewise the written assent and approbation of the said The Memphis & Charleston Railroad Company, under the corporate seal of the said railroad company, and the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., may, under and in pursuance of the sixth and seventh sections of the act of the legislature of the State of Tennessee, entitled "An act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the acts of such legislature in amendment thereof or supplementary thereto, pay, so far as the State of Tennessee is concerned, in bonds of the State of Tennessee, or coupons of such bonds at par, as by law of the State of Tennessee is authorized, the amount of the indebtedness hereinafter mentioned of the said Memphis and Charleston Railroad Company to the State of Tennessee; and the said Adrian Iselin and Adrian Iselin, Junior, composing the firm aforesaid, shall thereby and thereupon, as provided by the sixth section of said act, be substituted and entitled to all liens against said company for the payment of said debt that the State of Tennessee had or has by law, and shall thereby and thereupon, as provided by the seventh section of said act, be entitled to have and hold all the liens which the State of Tennessee had or has upon said railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being thereby declared to be to place the said Adrian Iselin and Adrian Iselin, Junior, so paying, with the consent of said railroad company, in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

And we do further certify that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have thereupon, with the consent and approbation of the said railroad company, and of the board of directors thereof, and under and in pursuance of and in accordance with the said sixth and seventh sections of the aforesaid act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other laws of the State of Tennessee, in that behalf paid to the State of Tennessee, in the bonds of said State, and coupons of such bonds, at par, as allowed by law, the amount of indebtedness of the said the Memphis and

Charleston Railroad Company to the State of Tennessee, and for which the State of Tennessee holds a lien by law upon said company's railroad in the State of Tennessee, and other property, which indebtedness is for or in respect of the amount of the bonds of the State of Tennessee which under the general improvement law passed the eleventh day of February, eighteen hundred and fifty-two, and the other acts of the legislature of said State, were originally loaned, issued, or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said railroad company failed to provide, the aggregate amount of the principal of such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account of the railroad company to the sinking fund being sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July instant upon the before mentioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents, making the whole amount of such indebtedness of said railroad company to the State of Tennessee, and for which the State holds a lien as aforesaid, the aggregate sum of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, exclusive of interest accrued since the first day of July instant, which aggregate sum or amount, together with the interest accrued thereon since the first day of July instant, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have this day, in the manner and under the circumstances aforesaid, paid to the State of Tennessee, in Tennessee State bonds and coupons at par, as allowed by the laws of said State; and we do further certify and declare that thereupon, and under and in pursuance of the sixth and seventh sections of the said act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other acts of the Legislature of the State of Tennessee in that behalf, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have become and are the purchasers and assignees of the above mentioned indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, with all the liens held by the said State therefor, and with all the rights in that behalf accorded or authorized by the said sixth and seventh sections respectively of said act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the same

are declared to be and are hereby assigned and transferred to them accordingly; and under and in accordance with the sixth section of the said act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that the said Adrian Iselin and Adrian Iselin, Junior, are substituted and entitled to all the liens against said railroad company for the payment of said indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said Memphis and Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had; the object and intent being, and being hereby declared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

In witness whereof, we have hereunto set our hands and official seals, this twenty-fifth day of July, eighteen hundred and seventy-seven.

(Signed) JAMES D. PORTER,
Governor of Tennessee.

CHARLES N. GIBBS,
Secretary of State.
[Seal of State of Tennessee.]

And whereas, by means of the premises aforesaid, the said Adrian Iselin and Adrian Iselin, Junior, are now the lawful owners and holders of the aforesaid indebtedness of the Memphis and Charleston Railroad Company, existing originally in favor of the said State of Tennessee, and amounting to the said sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven; and the said railroad company is indebted to the said Adrian Iselin and Adrian Iselin, Junior, as assignees of the State as aforesaid, in that amount and with such interest, and the said Adrian Iselin and Adrian Iselin, Junior, are also now the holders, by assignment as aforesaid, of the above mentioned statutory lien, in the nature of a mortgage originally existing in favor of the said State of Tennessee for the amount of the indebtedness aforesaid, and of all the

rights, liens, and securities which the said State of Tennessee had for and in respect of said indebtedness, and the interest accrued and to accrue thereon, and are and will be entitled to the like rights and remedies for the enforcement of such liens, and for the securing and collecting of such indebtedness and interest thereon as the State of Tennessee held or would have possessed and been entitled to if its said transfer to the said Adrian Iselin and Adrian Iselin, Junior, had not been made.

Now, this indenture witnesseth, that the said The Memphis and Charleston Railroad Company, in consideration of one dollar to it in hand paid by the said Adrian Iselin and Adrian Iselin, Junior, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in consideration of the premises, and for other good and valuable considerations it thereunto moving, the receipt whereof is also hereby acknowledged, and in conformity with a provision in that behalf contained in the consolidated mortgage hereinafter mentioned, doth hereby recognize, ratify and confirm the holding and ownership by the said Adrian Iselin and Adrian Iselin, Junior, under transfer from the State of Tennessee, as aforesaid, of the aforesaid indebtedness of said railroad company originally existing in favor of the State of Tennessee, amounting to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, due as of the first day of July, eighteen hundred and seventy-seven, with the interest accrued and to accrue thereon from that date, together with the lien which the State of Tennessee held therefor, and all the securities, rights and remedies therefor and in respect of the same and the enforcement thereof which the State of Tennessee had. And said Memphis and Charleston Railroad Company doth hereby covenant and agree to pay such indebtedness, with the interest accrued and hereafter to accrue thereon, to the said Adrian Iselin and Adrian Iselin, Junior, their representatives and assigns.

And for the consideration aforesaid, the said Memphis and Charleston Railroad Company doth hereby covenant, grant, declare, and agree to and with the said Adrian Iselin and Adrian Iselin, Junior, their representatives and assigns, and to and with the said The Farmers' Loan and Trust Company, as trustee under and for the uses and purposes of this indenture, that the said Adrian Iselin and Adrian Iselin, Junior, and their representatives and assigns, including the said The Farmers' Loan and Trust Company, as assignee thereof in trust hereunder, and for the uses and purposes hereof, do and shall have and hold, and are and shall be entitled to all the same or the like liens and securities for and

in respect of the aforesaid indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and each and every part thereof, with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, and all the same or the like rights and remedies therefor and in respect thereof, and for the enforcement of the said liens and securities and the collection of the said indebtedness and such interest accrued and to accrue thereon, as the State of Tennessee had or held, or was entitled unto, or would have had, held, and been entitled unto, if it had continued to be the holder and owner of such debt and of the liens and securities therefor; and that the same shall be paramount, prior, and superior to the lien of the consolidated mortgage dated the twentieth day of August, eighteen hundred and seventy-seven hereinafter mentioned; and that the said The Memphis and Charleston Railroad Company, and its successors and assigns, shall and will, at any and all times hereafter, upon reasonable request therefor, make, do, and execute all such further and other deeds, assurances, and acts as, under the advice of counsel, shall be reasonably advised or devised or requirted from them in order to confirm and effectuate all such liens, securities, rights, and remedies in and to the said Adrian Iselin and Adrian Iselin, Junior, and their representatives and assigns, including the said party of the second part hereto as assignee in trust as aforesaid, according to the intention and purpose of this indenture.

And this indenture further witnesseth, That the said The Memphis and Charleston Railroad Company, simultaneously with the execution and delivery hereof, for good and valuable consideration it thereto moving has transferred and delivered over to the said Adrian Iselin and Adrian Iselin, Junior, as an additional collateral security to them and their representatives and assigns for the aforesaid indebtedness of the said railroad company, originally existing in favor of the State of Tennessee, and assigned and transferred to, and now held by said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now amounting, as aforesaid, to the sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and for the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy seven, fourteen hundred certain consolidated first mortgage bonds of the said The Memphis and Charleston Railroad Company, bearing date August twentieth, eighteen hundred and seventy-seven, each for the payment of the sum of one thousand dollars in United States gold coin, on the first day of Jan-

uary, nineteen hundred and fifteen, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like gold coin semi-annually, on the first days of January and July in each year, issued under and secured by the said railroad company's so-called consolidated mortgage, or deed of trust, bearing date August twentieth, eighteen hundred and seventy-seven, to the said The Farmers' Loan and Trust Company as trustee, made to secure an issue of consolidated bonds thereunder limited to the aggregate amount of four million seven hundred thousand dollars, which fourteen hundred bonds, so transferred and delivered to the said Adrian Iselin and Adrian Iselin, Junior, are numbered consecutively from one (1) to fourteen hundred (1,400), both inclusive. *And* it is hereby expressly declared and agreed by and between the said The Memphis and Charleston Railroad Company and the said Adrian Iselin and Adrian Iselin, Junior, that such transfer and delivery to said Adrian Iselin and Adrian Iselin, Junior, of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, is not in anywise to operate as a payment of, or upon account of, the aforesaid indebtedness of the said railroad company to the said Adrian Iselin and Adrian Iselin, Junior, as assignees of the rights of the said State of Tennessee, as aforesaid, amounting to the above mentioned sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, with interest as aforesaid; nor shall such transfer and delivery of such fourteen hundred bonds in anywise diminish, impair, nor affect the prior and paramount lien for the amount of such indebtedness and interest on the portion of said railroad, situated in the said State of Tennessee, with its appurtenances and equipments, and the other property in that State, which originally existed in favor of the said State of Tennessee, and which is now held by said Adrian Iselin and Adrian Iselin, Junior, under transfer from said State as aforesaid; but that, notwithstanding such transfer and delivery to said Adrian Iselin and Adrian Iselin, Junior, of such fourteen hundred bonds, the said debt against said railroad company now held by them under transfer from said State of Tennessee, and the lien therefor originally existing in favor of said State, and vested in them by transfer as aforesaid, and all the rights and securities and remedies of the said Adrian Iselin and Adrian Iselin, Junior, for the security of said indebtedness originally existing in favor of said State, with the interest thereon accrued and to accrue, or for the enforcement of the lien therefor, are to and shall remain in full force and effect, as if said fourteen hundred bonds had not been transferred and

delivered as additional security therefor, as aforesaid: *Provided, however*, and it is hereby agreed, that all sums which shall have been actually paid in cash by said railroad company, on account of interest or principal upon said fourteen hundred bonds, or any of them, either to said Adrian Iselin and Adrian Iselin, Junior, or to any one holding any of such bonds by or under transfer to them, are when such payments respectively are actually made and realized in cash, and not before, to be credited as payments on account of said original indebtedness to the State of Tennessee, assigned to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, reckoning for the purpose of such credits such payments made in gold at the value thereof in United States legal tender currency at the time of payment, which payments received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and which payments, if any, received for or on account of principal of such fourteen hundred bonds, shall be applied on account of the principal of such indebtedness originally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven.

And it is hereby further provided, declared, and expressly agreed, by and on the part of the said Memphis and Charleston Railroad Company, that the said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to sell or otherwise dispose of or transfer any or all of the said fourteen hundred bonds so transferred to them as they may deem fit, without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their assigns for or in respect of the same, and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of said bonds so sold or disposed of or transferred, but subject to the aforesaid obligation to give credit upon such original indebtedness for all payments made for principal or interest on such bonds so sold or disposed of or transferred, when such payments are actually made and realized in cash, but not before.

And whereas, The said Adrian Iselin and Adrian Iselin, Junior, contemplate, in pursuance of the foregoing authorization and agreement in that behalf, to sell or dispose of or transfer the whole or portions, from time to time, of the said fourteen hundred consolidated first mortgage bonds for one

thousand dollars each, now received by them by way of additional collateral security for the said indebtedness as aforesaid, and to accompany such sale or disposal, or transfer of such bonds by transfer, to the holders or takers thereof respectively of beneficial interests in and to a trustee for their benefit of the legal title to a proportionate part of said original indebtedness of the said railroad company to the State of Tennessee, and of the liens and securities therefor, originally held by the State, and now vested by transfer in them as aforesaid.

Now this indenture further witnesseth, that the said Adrian Iselin and Adrian Iselin, Junior, in consideration of the premises, and to the end aforesaid, and in further consideration of one dollar to them in hand paid by the party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and with the consent and approval of the said The Memphis and Charleston Railroad Company. hereby given and attested by the ensealing and delivery of these presents by the said railroad company, have assigned, transferred, and set over, and do hereby assign, transfer, and set over to the said The Farmers' Loan and Trust Company, party of the second part hereto, as trustee hereunder, and its successors and assigns, the aforesaid indebtedness of the said The Memphis and Charleston Railroad Company, originally existing in favor of the State of Tennessee, and now vested in the said Adrian Iselin and Adrian Iselin, Junior by transfer from said State as aforesaid, amounting to the before-mentioned sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, and likewise the aforesaid statutory lien, in nature of a mortgage, for the security of such indebtedness heretofore held by the State of Tennessee, and now vested by assignment in said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and all the liens, securities, rights, and remedies whatsoever, for the security and collection of such indebtedness and the interest thereon accrued and to accrue, which the said Adrian Iselin and Adrian Iselin, Junior, now are vested with or entitled to, or at any time or times hereafter, but for the execution and delivery of this instrument, would or might be entitled to have, hold, or exercise, *to be had and holden* by the said The Farmers' Loan and Trust Company as trustee, under this indenture, for the equal *pro rata* security and benefit of all such persons and corporations, including the said Adrian Iselin and Adrian Iselin, Junior. themselves, as from time to time shall be the holders of the

beforementioned fourteen hundred consolidated first mortgage bonds, numbered one to fourteen hundred inclusive, and so as that beneficial or equitable interests in the said indebtedness originally existing in favor of the State, including the interest thereon accrued and to accrue, and in the lien which was held by the State therefor, and in the rights and remedies in respect thereof, may (as it is hereby declared and agreed by the parties of the first and third part respectively shall be the case) vest equitably in the holders from time to time of such fourteen hundred collateral bonds, numbered one to fourteen hundred inclusive, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, in respect of so many of said fourteen hundred bonds as may remain in their hands untransferred by them, with *pro rata* equality in proportion to the respective amounts of such fourteen hundred bonds held by such parties respectively. And so that the holder of each of such fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the interest thereon accrued and to accrue, and the said lien and rights held for the security thereof, corresponding with the principal and interest of such bond so held by him, and with the proper proportionate addition thereto, by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such original indebtedness, with its attendant liens and securities remaining, nevertheless, vested in the said party of the second part hereto, in trust for the holders of said fourteen hundred collateral bonds as aforesaid, and to the end and intent that, notwithstanding any sale or disposition or transfer which may be made by said Adrian Iselin and said Adrian Iselin, Junior, of such fourteen hundred collateral bonds, numbered one to fourteen hundred, inclusive, the said debt and lien originally existing in favor of the State, and preserved in full force, and assigned and transferred to the said The Farmers' Loan and Trust Company, as trustee hereunder as as aforesaid, and the said bonds held as further collateral security therefor may, in substance and effect, be beneficially held by or for the account and benefit of the same persons, and that the parties may substantially, in respect of beneficial and equitable interests, be in like position as if the said original debt and lien, and the said fourteen hundred bonds, held as collateral security therefor, had all continued to be held by said Adrian Iselin and Adrian Iselin, Junior, or had been altogether assigned over by them to the same person or persons.

And, it is hereby further provided and declared, that the party of the second part hereto, as trustee as aforesaid, shall indorse upon the said fourteen hundred consolidated bonds, numbers 1 (one) to 1400 (fourteen hundred), inclusive, a certificate subscribed on behalf of the said party of the second part by its president, which shall be substantially in the following form, viz :

"It is hereby certified that Adrian Iselin and Adrian Iselin, Junior, as assignees from the State of Tennessee of a debt originally due by the Memphis and Charleston Railroad Company to the State of Tennessee, amounting as stated, including interest, to the first day of July, eighteen hundred and seventy-seven, to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and of the State's prior lien therefor upon said company's railroad line in Tennessee and other property in the State, have, with said railroad company's consent, executed and delivered an instrument dated the twenty-first day of August, eighteen hundred and seventy seven, assigning said original debt and lien to The Farmers' Loan and Trust Company as trustee, as an additional and special security for the fourteen hundred consolidated bonds of this issue, numbers one to fourteen hundred inclusive, whereof this is one, reference to which instrument is hereby made for showing the securities and rights acquired thereunder by the holders of said fourteen hundred bonds.

"Dated the twenty-first day of August, eighteen hundred and seventy-seven.

"THE FARMERS' LOAN AND TRUST COMPANY,

"By R. G. ROLSTON, *President.*"

And the said parties of the first part, with the consent of the said parties of the third part, do hereby covenant, declare, and agree to and with the party of the second part, as trustee for the benefit of the holders from time to time of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, and likewise to and with all such persons as shall from time to time become transferees or holders of any of such fourteen hundred bonds, having indorsed thereon such certificate substantially in the form or to the effect aforesaid, that all such holders from time to time of any such fourteen hundred bonds, having such certificate indorsed thereon, shall be possessed of, and entitled to, such proportional beneficial or equitable interest as hereinbefore declared or provided for in the said debt originally due from the Memphis and Charleston Railroad Company to the State of Tennessee, and the interest accrued or to accrue thereon, and in the said lien originally held by the State therefor, and in the rights, liens, and securities in respect thereof transferred

by the State to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and hereby vested in the party of the second part as trustee as aforesaid, as likewise to all others, their equitable rights as beneficiaries of the trust created by this indenture.

And inasmuch as under the terms and conditions of this instrument, and under and in virtue of the terms and conditions of the mortgage or deed of trust securing the issue of consolidated first mortgage bonds whereof said fourteen hundred bonds from one to fourteen hundred inclusive form part, as by reference to that mortgage or deed of trust will appear, there will exist a double lien and security for substantially the same amount or debt in favor of the holders of said debt and lien originally held by the State of Tennesses, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now transferred to the party of the second part in trust as aforesaid, and of the holders of the said fourteen hundred bonds numbered from one to fourteen hundred inclusive, held as further collateral security therefor, and which double lien, as to a part thereof, will exist upon the same subject-matter, namely, the said railroad in Tennessee, with its appurtenances and equipments, and the other property in that State subject to the State lien, although, as to other portions of the property covered by the said consolidated mortgage, situate in the States of Alabama and Mississippi respectively, the said State lien now vested in Adrian Iselin and Adrian Iselin, Junior, as aforesaid, has no application or operation. Now, it is hereby declared, provided, granted, and agreed by and between all the parties hereto, in conformity with the provisions and declarations in that behalf contained in the said consolidated mortgage securing the issue of bonds, whereof the said fourteen hundred bonds numbered from one to fourteen hundred inclusive form part, that such double lien and security is intended to and shall exist, and that neither of such liens or securities shall prejudice the efficacy of the other; and that the State lien held by assignment as aforesaid, and now vested in the said The Farmers' Loan and Trust Company as trustee under this indenture, and for the uses and purposes thereof may be enforced, and all the rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in virtue of the holding of such fourteen hundred bonds as further collateral security as aforesaid did not exist, and that the holders from time to time of such fourteen hundred bonds so transferred by way of further collateral security for such original debt shall be entitled, as fully and completely and effectually as if the said

original lien and security for the original debt, as further security for which said fourteen hundred bonds are transferred, did not exist, to their equal *pro rata* share and proportion in like manner with the holders of the other bonds, numbers 1401 (fourteen hundred and one) to 4,700 (four thousand seven hundred) inclusive, to be issued under and secured by the said consolidated mortgage, or such of said other bonds as may from time to time be outstanding, of the benefit of all the securities and liens provided by the said consolidated mortgage, and of the proceeds and fruits thereof, and of any foreclosure or enforcement of the same, including as well the mortgaged premises (situate in Alabama and Mississippi) as the other mortgaged premises, save and except that if, prior to making apportionment and distribution between the holders of the bonds secured by the said consolidated mortgage of the net proceeds of any foreclosure, or other legal enforcement thereof, any net sum shall have been actually collected and realized in cash by means of legal enforcement of the said lien originally held by the State of Tennessee and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now vested in the said The Farmers' Loan and Trust Company, as trustee under this indenture, by giving proper credit wherefor, after first deducting therefrom all proper expenses and charges incurred in respect of the proceedings for such enforcement and collection, including the compensation of the said party of the second part as trustee in respect thereof, the then unpaid amount of the said indebtedness of the railroad company originally existing in favor of the State, and by it transferred over as aforesaid, and as collateral security for which said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be held as aforesaid, shall be reduced below the principal of such fourteen hundred bonds, and the interest thereon accrued and unpaid at the time of such apportionment and distribution, having due regard to the circumstance that said bonds are payable in gold, and therefore reducing the amount of such net credit or deduction, realized in legal tender currency, to the value thereof in gold, when collected and realized, then and in such case, for the purpose of making such apportionment and distribution between the respective bond holders secured under said consolidated mortgage of the net proceeds of such foreclosure or other legal enforcement of said consolidated mortgage, the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, instead of being reckoned at their face value, with their accrued and unpaid interest, shall be reckoned as being only for an amount equal to such reduced amount, computed as aforesaid, remaining unpaid at the time of such apportion-

ment and distribution upon the said indebtedness of said railroad company originally existing in favor of the State of Tennessee, and by it transferred over as aforesaid, and for which the said fourteen hundred bonds shall stand as security, as aforesaid, and such apportionment and distribution between such fourteen hundred bonds and the other outstanding bonds secured by the said consolidated mortgage shall be made accordingly, and it being always understood, and hereby agreed and provided, that the double lien and security aforesaid will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction, but that all payments actually received and realized in money, by means of either security, will and shall, to the extent of such actual payments realized, go in reduction of such original debt, and of said collateral bonds, held as security therefor, but making the proper allowance for difference between gold and currency, as aforesaid.

And, in consideration of the additional collateral security now given to them, as aforesaid, and as part of the bargain and arrangement between the said Adrian Iselin and Adrian Iselin, Junior, and The Memphis and Charleston Railroad Company, in respect of the premises, which is evidenced by this indenture, the said Adrian Iselin and Adrian Iselin, Junior, do hereby consent and agree to and with the said The Memphis and Charleston Railroad Company, that they will eventually reduce the amount of their said claims and demands against said railroad company, and the lien and the security therefor, under the said assignment and transfer from the State of Tennessee to them, so that when they or their assigns shall have actually received and realized, in cash, by net payments, as on account of the said present amount of the said indebtedness of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars ($1,400,000) in United States gold coin, reducing currency realizations or payments to gold values, as elsewhere provided, and when they or their assigns shall have actually received and realized in cash, by net payments, on account of interest accruing, at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), a sum equal to seven per cent. per annum, in United States gold coin, from the first day of July, eighteen hundred and seven-seven, payable semi-annually, on the first days of

January and July, upon such sum of fourteen hundred thousand dollars ($1,400,000) gold, until payment and realization in cash, as aforesaid, of that principal sum, reducing currency realizations or payments to gold values, as elsewhere provided, the residue of such currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), and of the interest accruing thereon, from and after July first, eighteen hundred and seventy-seven, shall be thereupon given up, released, and discharged to said railroad company.

Provided however, and it is understood as a condition thereof, that the said The Memphis and Charleston Railroad company shall, as they hereby agree they will, bear, pay, and discharge all the expenses and charges attendant upon the collection and receipt of such moneys on account of the principal and interest (or either) of such indebtedness originally existing in favor of the State, and of all legal and other proceedings had or taken for the recovery thereof, including the compensation of the party of the second part, as trustee, in respect of such collection, receipt, and legal and other proceedings.

And it is agreed, that this stipulation, on the part of said Adrian Iselin and Adrian Iselin, Junior, shall bind their representatives and assigns, including the said The Farmers' Loan and Trust Company, as assignee of such debt in trust for the purpose of this indenture, whereunto the said The Farmers' Loan and Trust Company, as such trustee, does hereby assent.

It is further understood aad agreed, that, for the purpose of this stipulation and agreement, all cash payments received and realized for principal or interest upon such fourteen hundred bonds, numbered from one to fourteen hundred, inclusive, or any of them, by parties holding such bonds, by or under transfer from said Adrian Iselin and Adrian Iselin, Junior, shall be of like legal effect as if the said moneys were received by said Adrian Iselin and Adrian Iselin, Junior, themselves.

And it is further provided, declared, granted, and agreed, that all net sums or amounts which shall be received or in anywise realized by the said The Farmers' Loan and Trust Company, as trustees under this indenture, for or in respect of, or from or by reason of, the indebtedness of the Memphis and Charleston Railroad Company, originally existing in favor of the said State of Tennessee, and hereby assigned to the Farmers' Loan and Trust Company, as trusstee as aforesaid, or by means of enforcement, in any form, of the said statutory lien in the nature of a mortgage, or of any

other liens or securities for such indebtedness, held by the said The Farmers' Loan and Trust Company, as Trustees under this indenture, shall, after first deducting therefrom all proper expenses and charges in the premises, including the compensation of the trustee in respect thereof, be divided with *pro rata* equality among all and singular the holders of the said fourteen hundred bonds issued under and secured by the said consolidated mortgage, and numbered from one to fourteen hundred, inclusive, in proportion to the amounts of principal and interest due or owing, at the time being, upon such fourteen hundred bonds; and it being understood and agreed that the said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to participate therein for or in respect of such of the said fourteen hundred bonds as they may retain in their own hands, unsold or undisposed of, in like manner as holders of any such bonds under the transfer thereof from them; and it being further understood that the holders of such fourteen hundred bonds are not to receive, in the whole, a greater sum than the amounts in gold of the principal and interest of their bonds, reducing the currency realizations or credits or payments to the gold values thereof at the time of realisation or payment as aforesaid.

And the said Adrian Iselin and Adrian Iselin, Junior, with the assent and concurrence of the said The Memphis and Charleston Railroad Company, which is hereby given, do hereby authorize and empower the said The Farmers' Loan and Trust Company, as trustee as aforesaid, in any and every case of the occurance of such default on the part of said railroad company, or of the existence otherwise of such circumstances as to authorize any proceedings, either at law or in equity, or by entry into possession and receipt of income, or otherwise howsoever, for the enforcement of the lien, which was originally held by the State of Tennessee, for security of the aforesaid indebtedness of the said railroad company to the State, and which was transferred and assigned by the State to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, or for the collecting or security of such indebtedness and the interest thereon accrued or to accrue, or either such principal or interest or any part thereof, to take any and all such proceedings, either at law or in equity, or by entry into possession and receipt of income, or otherwise howsoever, for and all of the purposes and ends aforesaid, either in the name, and as the attorneys of, the said Adrian Iselin and Adrian Iselin, Junior, or otherwise, as may be deemed expedient, and to do all acts and things needful or proper to such ends.

It is hereby provided, declared, and agreed, that, the said The Farmers' Loan and Trust Company, in case it shall be called upon to take any legal or other steps or proceedings for the enforcement of the lien or for collection of the said indebtedness hereby assigned to it, shall be entitled to receive just and proper compensation for all the services it shall render in and about such steps or proceedings, as well as for any other services it may properly render in the performance of its duties as such trustee, as also indemnity for its proper disbursement in the premises, which compensation and indemnity shall be borne and paid by the said railroad company, and if not so paid by the said railroad company directly may be deducted from the sums collected or received by it as such trustee, in the accounting for such moneys and application thereof to the purposes of this trust. The trustee, however, shall not be compelled to commence such foreclosure proceedings until the parties requesting the same shall have furnished the said trustee with satisfactory indemnity for all costs and charges.

And it is further provided, declared, and agreed, that in case of a vacancy at any time occurring in the trusteeship of the party of the second part hereunder or its successors, either by resignation duly accepted by a majority in amount of said bondholders who are beneficiaries of the trust, removal, death or otherwise howsoever, such vacancy may be filled by the concurrent action in writing under seal of a majority in amount of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, who are the beneficiaries of the trust ; and that the party of the second part or any of its successors as trustee hereunder, howsoever appointed, may at any time be removed from the trust by concurrent action in writing under seal of a majority in amount of the holders of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, and in default of filling a vacancy by such majority in amount of such bondholders the same may be filled by the appointment of a new trustee or trustees by the Supreme Court of the State of New York, in the city of New York, upon appropriate proceedings for the purpose, which trustee so appointed shall nevertheless, in like manner with any other trustee hereunder, be subject to removal by a majority in interest of the bondholders as aforesaid, and further that in the filling of a vacancy in the trusteeship there may be either one or two trustees appointed to fill the vacancy, and either another corporation having legal capacity for the trust or one or two individual trustees may be appointed to fill any vacancy, and that all succeeding trustees duly appointed shall be vested with the trust and all the estates, rights, interests,

powers and duties vested in the said party of the second part as trustee hereunder in like manner and with like effect as the original trustee.

And inasmuch as there are lands in the city of Memphis which were procured or intended for the use as depot grounds, or for sites for depots, shops or other buildings, now belonging to the said The Memphis and Charleston Railroad Company, and subject to the aforesaid lien originally existing in favor of the State of Tennessee, and assigned to Adrian Iselin and Adrian Iselin, Junior, and now assigned to the party of the second part hereto as trustee hereunder, and which are partly now in use for such purposes and partly not so in use, and which lands are of much greater extent and value than is required for the uses of the said railroad, and may be advantageously sold and disposed of in aid of the general fund of the said railroad company, now it is hereby declared, granted, provided and agreed, that the said railroad company shall sell, or contract to sell, any of such lands in the city of Memphis which it shall decide no longer to use for the purposes of its said railroad, or the operation thereof, and shall require to have released from the lien held by the party of the second part, or its successors, as trustee under this indenture, in order to give a title to the purchaser thereof free from such lien, it shall be competent and lawful for the said party of the second part, or its successor or successors, as trustees hereunder, and it and they are hereby authorized and empowered to release by proper deed or deeds, or instruments in the law for the purpose, from the aforesaid lien originally existing in favor of the State of Tennessee, and vested by assignment in the party of the second part hereto as trustee as aforesaid, and from any and all lien thereon of the said party of the second part, or its successor or successors, as trustee hereunder, any and from time to time all such lands in the city of Memphis so disused for the purposes of said railroad, and so sold or disposed of by said railroad company: *Provided always*, that if at the time of such release the said Adrian Iselin and Adrian Iselin, Junior, or either of them, shall be living and not absent from the United States, and not mentally incapacitated, they, or one of them so living, and not absent or incapacitated, must, as a condition of the efficacy of such release, assent in writing to the giving thereof, which assent may be by writing in the release; and provided further, that in case of the sale and release as aforesaid of any of such lands in Memphis so disused, if any other lands shall be procured by said railroad company to be used in place thereof, or substitution therefor, for depot grounds or sites for buildings,

or other purposes of such railroad, or its operating, such substituted lands shall be subject to the like lien in favor of the said party of the second part, or its successors or successor, as trustee hereunder, as were such released lands. And the said railroad company shall, by proper deed or instrument, confirm and assure, and, if need be, execute such lien upon such substituted lands, and upon all buildings and other improvements placed thereon, to and in favor of the said party of the second part, as trustee hereunder, or its successor or successors.

And inasmuch as the party of the second part hereto is trustee under the before-mentioned consolidated mortgage for the benefit of the holders of all the said consolidated bonds, numbers one to four thousand seven hundred inclusive, as well as trustee under this indenture in respect of the special trust created, and special and additional security thereby given for the special and separate benefit of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, it is hereby declared and agreed, in conformity with a provision in that regard contained in said consolidated mortgage, that such circumstances of the said The Farmers' Loan and Trust Company being likewise trustee under the said consolidated mortgage, shall in no wise detract from, affect, or impair the special and exclusive rights and securities of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, held by them through the said trusteeship of the said party of the second part, under this indenture, for their separate use and benefit as aforesaid.

And this indenture further witnesseth, that the said Adrian Iselin and Adrian Iselin, Junior, in consideration of the premises, do hereby for themselves and their representatives covenant and agree to and with the said party of the second part, as trustee under this indenture, and for the uses and purposes thereof, and to and with all such persons and corporations as shall from time to time become or be lawful owners or holders of any of the before mentioned fourteen hundred bonds, numbers one to fourteen hundred inclusive, having indorsed thereon such certificate of the party of the second part by its president, as is above provided for, that they, the said Adrian Iselin and Adrian Iselin, Junior, and their representatives, shall and will, at any time, and all times hereafter, upon reasonable request therefor, and at the expense of the party requesting the same, make, do, and execute all such further and other acts, deeds, conveyances, or assurances as under the advice of competent counsel shall be deemed necessary or advisable, in order to confirm, assure, and make effectual the assignment and transfer

hereinbefore contained or intended to be made to the party of the second part as trustee for the benefit and security of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, in accordance with the true intent and meaning hereof, to effectuate the objects and purposes of this indenture.

It is hereby further provided, declared, and agreed, that in case of the party of the second part, trustee hereunder, entering upon and taking possession of the said railroad and other property in the State of Tennessee, covered by the said lien originally held by the State, and hereby assigned to the party of the second part as trustee hereunder, in consequence of default made by said railroad company, entitling it so to do, it shall be lawful and competent for such trustee to employ an agent or agents for the performance of any such duties, acts, and things in and about taking and maintaining such possession, and using, operating, maintaining, and managing the said railroad, and collecting the income, earnings, and profits thereof, and performing the other duties of the trust created hereby, as such trustee may deem fit, and for the performance of any other acts in and about such possession and management, the performance whereof can be properly delegated to an agent; and that such trustee, provided it shall have exercised reasonable prudence and care in the selection and employment of such agent or agents for any of such purposes, shall not be responsible for losses or damages in the premises caused by the act, neglect, or default of such agent or agents. But this provision is not intended, and shall not be so construed as to exempt the trustee in case of sale being made of the said premises covered by the lien in enforcement of such lien, from due responsibility to the bond holders hereby secured for the due application of the proceeds of such sale, received either by the trustee or by any agent or agents whom it may see fit to employ to receive such proceeds of sale.

And the said The Farmers' Loan and Trust Company, trustee hereunder, and its successors are hereby released from executing the bond required from trustees by the laws of Tennessee, and from giving any bond or security as trustee or trustees under this indenture which may or might otherwise be required by the laws of either of the States of Tennessee, Mississippi, and Alabama.

And said party of the secend part hereby accepts the trust hereby created, and agrees to perform the duties thereof.

In witness whereof, the said parties of the first part have hereto set their hands and seals, and the party of the second

part, in pursuance of a resolution of its board of directors, hath hereunto affixed its corporate seal, and caused the same to be attested by its president.

And the said party of the third part, in pursuance of a resolution of its board of directors, hath hereunto affixed its corporate seal, and caused the same to be attested by its president and secretary, the day and year first above written.

ADRIAN ISELIN, (SEAL.)
ADRIAN ISELIN, JR., (SEAL.)
Witnesses: A. ISELIN & CO., (SEAL.)
W. H. CLARKSON,
CHARLES NETTLETON.

FARMERS' LOAN AND TRUST CO.,
[SEAL.] *By* R. G. ROLSTON, *President.*

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
[SEAL.] *By* R. T. WILSON,
President.
By S. R. CRUISE,
Secretary.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, That on this 21st day of August, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Tennessee, in and for the State of New York, residing in said city of New York, personally appeared R. T. Wilson, the president of the Memphis and Charleston Railroad Company, the foregoing named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument for the purposes therein contained, as his act and deed as such president, and the act and deed of said Memphis and Charleston Railroad Company. And, being duly sworn, he did depose and say, that he is the president of the said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by order of the board of directors of said company, and that he signed his name therero by the like order as such president. And, on the 29th day of August, A. D. 1877, before me, also personally appeared Rosewell G. Rolston, the president of the Farmers' Loan and Trust Company, of New York, the foregoing named trustee, with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument, for the purpose therein contained, as his own act and deed, and the act and deed of the said Farmers' Loan and Trust Company. And, being by me duly sworn,

he did depose and say, that he is the president of the said Farmers' Loan and Trust Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order as such president. And, on the said 29th day of August, A. D. 1877, before me, also personally apppeared Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., the foregoing named bargainers, with whom I am personally acquainted, and who each acknowledged that they executed the foregoing instrument for the purposes therein contained, as their act and deed, and the act and deed of their said firm.

In witness whereof, I have hereunto set my hand, and affixed my official seal, this 29th day of August, A. D. 1877.

[SEAL.] CHARLES NETTLETON,
Commissioner for Tennnessee in New York.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } *ss.*

Be it remembered, that on the 21st day of August, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Alabama, in and for the State of New York, residing in said city of New York, personally appeared R. T. Wilson, the president of the Memphis and Charleston Railroad Company, whose name is signed to the foregoing instrument, and who is known to me, and who acknowledged before me on that day, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed, and the act and deed of the said Memphis and Charleston Railroad Company. And, being by me duly sworn, he did depose and say, that he is the president of the said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order as such president. And, on the 29th day of August, A. D. 1877, before me, also personally appeared Rosewell G. Rolston, president of the Farmers' Loan and Trust Company, whose name is signed to the foregoing instrument, and who is known to me, and acknowledged before me on that day that, being informed of the contents of said instrument, he executed the same voluntarily, on the day the same bears date, as his act and deed, and the act and deed of said Farmers' Loan and Trust Company. And being duly sworn,

he did depose and say, that he is the president of the said Farmers' Loan and Trust Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and that it was affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order, as such president. And, on the said 29th day of August, A. D. 1877, before me, also personally appeared Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin, & Co., and whose names are signed to the foregoing instrument, and who are known to me, and severally acknowledged before me on that day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date, as their act and deed, and the act and deed of their said firm.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 29th day of August, A. D. 1877.

(SEAL) CHARLES NETTLETON,
Commissioner of Alabama in New York.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, that on the 21st day of August, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Mississippi, in and for the State of New York, residing in said city of New York, personally appeared R. T. Wilson, president of the Memphis and Charleston Railroad Company, who acknowledged that he signed, sealed, and delivered the foregoing instrument, as his act and deed, as such president, and the act and deed of said Memphis and Charleston Railroad Company. And, being by me duly sworn, he did depose and say, that he is the president of said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and that it was affixed thereunto by order of the board of directors of said company, and that he signed his name thereunto by the like order, as the president of said company. And, on the 29th day of August, A. D. 1877, before me also personally appeared Rosewell G. Rolston, the president of the Farmers' Loan and Trust Company of New York, who acknowledged that he signed, sealed, and delivered the foregoing instrument as his act and deed, as such president, and the act and deed of the said Farmers' Loan and Trust Company. And, being by me duly sworn, he did depose and say, that he is the president of the said Farmers' Loan and Trust Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of

said company, is such corporate seal, and that it was affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order, as such president. And, on the said 29th day of August, A. D. 1877, before me, also personally appeared Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., who each acknowledged that they signed, sealed, and delivered the foregoing instrument as their act and deed, and the act and deed of their said firm.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 29th day of August, A. D. 1877.

[SEAL.] CHARLES NETTLETON,
Commissioner for Mississippi in New York.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } *ss.*

Be it remembered, that on this 10th day of September, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Tennessee, in and for the State of New York, residing in said city of New York, personally appeared S. R. Cruise, secretary of the Memphis and Charleston Railroad Company, the within named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the foregoing instrument for the purpose therein contained, as his act and deed, and the act and deed of said company. And the said S. R. Cruise, being duly sworn, he did depose and say that he was the secretary of said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order, as the secretary of said company.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 10th day of September, A. D. 1877.

[SEAL.] CHARLES NETTLETON,
Commissioner for Tennessee in New York.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, that on this 10th day of September, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Alabama, in and for the State of New York, residing in said city of New York, personally appeared S. R. Cruise, secretary of the Memphis and Charleston Railroad Company, whose name is signed to the foregoing instrument, and who is known to me, and who acknowledged to me, on

this day, that, being informed of the contents of said instrument, he executed the same voluntarily, on the day the same bears date, as his voluntary act and deed, and the voluntary act and deed of said company. And being by me duly sworn, he did depose and say that he was the secretary of said company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company, and that he signed his name thereto by the like order, as the secretary of said company.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 10th day of September, A. D. 1877.

[SEAL.] CHARLES NETTLETON,
Commissioner for Alabama in New York.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK. } *ss.*

Be it remembered, that on this 10th day of September, A. D. 1877, before me, Charles Nettleton, a commissioner of deeds of the State of Mississippi, in and for the State of New York, residing in said city of New York, personally appeared S. R. Cruise, secretary of the Memphis and Charleston Railroad Company, who acknowledged that he signed, sealed, and delivered the foregoing instrument, as his act and deed as such secretary, and the act and deed of said company. And, being duly sworn, he did depose and say that he was the secretary of said company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is such corporate seal, and that it was so affixed thereto by order of the board of directors of said company, and that he signed his name thereto, as such secretary, by the like order.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Mississippi in New York.

Exhibit No. 3.

NUMBER XXXVIII. — JOINT RESOLUTION APPOINTING COMMISSIONERS TO SETTLE WITH THE LOUISVILLE AND NASHVILLE RAILROAD.

Resolved by the General Assembly of the State of Tennessee, That the comptroller, secretary of the State, attorney-general of the State, and commissioner of public roads of the State of Tennessee, be, and are hereby constituted commissioners on behalf of the State of Tennessee, to meet and make a settlement with the Louisville and Nashville Railroad Company, and make a report thereof to this session of the General Assembly, if practicable; if not, to the next session of the same,

Be it further Resolved, That if such settlement cannot be made by said commissioners, with said Louisvile and Nashville Railroad, as shall be satisfactory to them, the fact shall be made known to the governor of the State, and he may direct the attorney-general of the State to institute such proceedings against said company as may be necessary to protect the interests of the State.

WILLIAM HEISKELL,
Speaker of the House of Representatives.

SAMUEL R. ROGERS,
Speaker of the Senate.

Dated *May* 5, 1864.

Exhibit No. 4.

SETTLEMENT WITH THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

NASHVILLE, TENNESSEE, *November* 18, 1865.

To the General Assembly of the State of Tennessee:

In obedience to a resolution of your honorable body, entitled "a resolution to appoint commissioners to settle with the Louisville and Nashville Railroad Company," adopted May 5, 1865, the undersigned, as commissioners on behalf of the State, have met the Hon. James Guthrie, president, and Mr. Willis Ranney, secretary of said company, at the State Capitol, for the purpose contemplated in the resolution.

The memorial upon which said resolution is founded, and which, it is said, sets forth the various matters of settlement, has not been furnished to the commissioners, but has been mislaid in one house or the other of the legislature. But from a statement of its contents by Mr. Guthrie, your commissioners are of opinion that the only matter legitimately referred to them, is the indebtedness of said company to the State on account of the aid furnished the company in the shape of bonds loaned to them, and the interest thereon.

It appears from the books of the secretary of State, that said company have, at different times, received the sum of five hundred and sixty thousand five hundred dollars ($560,500) of the bonds of the State, in aid of the construction of their road, and the bridge across the Cumberland, at Nashville. It appears from the books of the comptroller, that the interest on these bonds has been paid up to July 1, 1861. The interest accruing since that time amounts to one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131.25), making the entire indebtedness of said railroad company to the State, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents ($707,631.25). The principal, Messrs. Guthrie and Ranney, on behalf of the said company, proposed to pay over in straight six per cent. coupon bonds of the State, and the interest in coupons of the State now due.

Believing it to be manifestly for the interest of the State to call in this large installment of its indebtedness, and believing, moreover, that the company had a right, under the law regulating the sinking fund, to pay off its entire indebtedness in the bonds of the State, your commissioners accepted the proposal, and executed to the commissioners, on behalf of the company, the following receipt, a duplicate of which is retained in the office of the comptroller:

NASHVILLE, TENNESSEE, *November* 17, 1865.

We, the undersigned, commissioners appointed by the General Assembly of the State of Tennessee, by joint resolution adopted May 5, 1865, "to meet and make settlement, on behalf of the State, with the Louisville and Nashville Railroad Company," have this day met and settled with the Hon. James Guthrie, president, and Willis Ranney, secretary of said company, and have received from them five hundred and fifty-one coupon bonds of the State, for one thousand dollars each ($551,000), nine thousand five hundred dollars ($9,500) in coupons of the bonds of the State now due; also, one hundred and forty-seven thousand one hundred and thirty-one dollars and twenty-five cents ($147,131,-25) in coupons of the bonds of the State, in payment of interest due from said company, accruing since July 1, 1861; making in all, seven hundred and seven thousand six hundred and thirty-one dollars and twenty-five cents, being the total indebtedness of said company to the State of Tennessee, on account of the bonds of the State, received in aid of the construction of said road, and the bridge across the Cumberland River.

Given under our hands, this 17th of November, 1865.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General,*
A. W. HAWKINS, *Com. of Roads.*

The bonds and coupons mentioned in said receipt are deposited with the comptroller of the State, and a list of the numbers and amount of the coupons is filed in the office of the secretary of State.

From the statement of Mr. Guthrie, your commissioners are of opinion that the other matters contained in the memorial, grow out of the consolidation of said road with the Edgefield and Kentucky road, by the acts of December 1, 1855, and December 3, 1859, and should be settled by the two companies, unless the latter road should fall permanently into the hands of the State. At any rate, the adjustment of these matters has been waived for the present by consent.

The last installment of interest, amounting to sixteen thousand eight hundred and fifteen dollars ($16,815), was paid by said company into the Bank of Tennessee, on the 9th day of May, 1861, as appears from their receipt. This was two days after the adoption of the Secession Ordinance; but as the law required the payment to be made to the bank, and as your commissioners can not see that the status of the bank was changed at that early day, they consider the

payment legal. The fact that the fund was lost by the bad faith of the bank, does not, in the opinion of your commissioners, furnish any just or legal grounds for recourse on the company.

Respectfully submitted.

A. J. FLETCHER, *Sec'y of State.*
S. W. HATCHELL, *Comptroller.*
T. H. CALDWELL, *Att'y-General.*
A. W. HAWKINS, *Com. of Roads.*

Exhibit No. 5.

STATEMENT SHOWING AMOUNT OF BONDS ISSUED BY THE STATE OF TENNESSEE IN AID OF DIFFERENT RAILROAD COMPANIES, AND WHAT DISPOSITION HAS BEEN MADE OF THE INDEBTEDNESS TO THE STATE IN CASE OF THE SEVERAL RAILROADS.

Sold by Commissioners.

EDGEFIELD AND KENTUCKY R. R.—			
Bonds issued (including $200,000 to E. H. N.)	$1,380,000 00		
Interest funded, January 1, 1866	231,812 00		
Interest unpaid, July 1, 1870	365,220 00		
U. S. claims assumed	130,804 58	$2,107,836 58	
Sold August 26, 1861, for		900,000 00	
CIN'TI, CUMB. GAP AND CHARLESTON R. R.—			
Bonds issued	1,373,000 00		
Interest unpaid	242,068 12	1,615,068 12	
Sold October 16, 1871, for		300,000 00	
KNOXVILLE AND KENTUCKY R. R.—			
Bonds issued	2,350,000 00		
Interest unpaid	394,380 00	2,744,380 00	
Sold October 10, 1871, for		350,000 00	
MCMINNVILLE AND MANCHESTER R. R.—			
Bonds issued	772,000 00		
Interest unpaid	294,037 00	1,066,037 00	
Sold August 15, 1871, for		300,000 00	
NASHVILLE AND NORTHWESTERN R. R.—			
Bonds issued	3,222,000 00		
Interest funded, January 1866	396,475 00	3,618,475 00	
Balance interest unpaid, July, 1870		817,725 00	
Sold October, 1871, for	2,400,000 00		
ROGERSVILLE AND JEFFERSON R. R.—			
Bonds issued	385,000 00		
Interest funded, January, 1866	38,160 00	423,160 00	
Interest unpaid, July, 1870		96,158 00	
Sold March, 1872, for	23,000 00		
WINCHESTER AND ALABAMA R. R.—			
Bonds issued	1,289,000 00		
Interest funded, January, 1866	143,259 00	1,432,259 00	
Interest unpaid, July, 1870		315,309 33	
Sold September, 1871	300,000 00		

KNOXVILLE AND CHARLESTON R. R.—		
Bonds issued	710,000 00	
Interest unpaid	85,200 00	
Sold March 22. 1872, for		105,000 00
EAST TENN. AND WEST'N N. CAR. R. R.—		
Bonds issued	400,000 00	
Interest unpaid	36,000 00	
Sold November, 1871, for		20,000 00
MEMPHIS, CLARKSV'LE AND LOUISV. R. R.—		
Bonds issued	1,582,000 00	
Interest funded, January. 1866	312,600 00	1,894,600 00
Interest unpaid		613,986 00
U. S. Claims assumed		380,756 00
Sold September 28, 1871, for	1,700,000 00	
TENNESSEE AND PACIFIC R. R.—		
Bonds issued	1,165,000 00	
Interest unpaid, July, 1870	71,080 00	
Sold August 8, 1872, for		300,000 00

P. S.—

Total bonds issued to railroads	$29,252,000 00
Of these bonds there have been canceled, about	15,800,000 00
Leaving of the original issuance outstanding, about	14,250,000 00

Roads which have Liquidated their Indebtedness.

EAST TENNESSEE AND VIRGINIA R. R.—			
Bonds issued	$2,202,000 00		
Interest funded, 1866	250,038 55		
	2,452,038 55		
Less sinking fund paid	3,000 00—		$2,449,038 55
EAST TENNESSEE AND GEORGIA R. R.—			
Bonds issued	1,614,000 00		
Interest funded, January, 1866	180,277 50		
	1,794,277 50		
Less amount sinking fund paid	125,000 00		1,669,277 50
Total indebtedness of the two above roads, paid August 1, 1870, by East Tennessee, Virginia and Georgia R. R. Co. (consolidated)			$4,118,316 05
CENTRAL SOUTHERN R. R.—			
Bonds issued	596,000 00		
Interest funded, January, 1866	128,160 00—		724,160 00
TENNESSEE AND ALABAMA R. R.—			
Bonds issued	1,069,000 00		
Interest funded, January, 1866	225,016 00—		1,294,016 00
NASHVILLE AND DECATUR R. R.—			
Bonds issued			350,000 00
Total paid by the Nashville and Decatur R. R. Co., March, 1871			2,368,176 00
MEMPHIS AND CHARLESTON R. R.—			
Bonds issued	1,700,000 00		
Interest funded, January, 1866	185,387 45—		1,885,387 45
Less amount paid on sinking fund			213,471 20
Balance paid, July 25, 1877			1,671,916 25
MEMPHIS AND OHIO R. R.—			
Bonds issued	2,001,000 00		
Interest funded, January, 1866	395,110 00		
Paid, May 25, 1871	2,396,110 00		
MISSISSIPPI AND TENNESSEE R. R.—			
Bonds issued	398,000 00		
Interest funded, January, 1866	22,800 00—		420,800 00
Less amount paid on sinking fund			121,000 00
Balance paid, January 16, 1878			299,800 00

MOBILE AND OHIO R. R.—

Bonds issued	1,296,000 00
Interest funded, January, 1866	388,800 00
Paid January 1, 1872	1,684,800 00

MISSISSIPPI CENT. AND TENNESSEE R. R.—

Bonds issued	1,124,000 00
Interest funded, January, 1866	75,180 00
Paid, December 1, 1877	1,199,180 00

NASHVILLE AND CHATTANOOGA R. R.—

Bonds issued	395,000 00
By sinking fund paid	30,835 00
Balance paid, January 1, 1874	364,165 00

Recapitulation.

DEFAULTING RAILROADS SOLD BY THE STATE COMMISSIONERS.—		
Bonds issued		14,628,000 00
Interest funded, January, 1866		1,122,306 00
Interest unpaid, July, 1870		3,331,163 12
U. S. Government claims assumed	511,560 00	—19,593,029 12
Amount realized by sale of the above roads (sales bearing date July, 1870).		6,698,000 00
ROADS WHICH HAVE SETTLED THEIR INDEBTEDNESS.—		
Bonds issued		12,742,000 00
Interest funded, January, 1866		1,850,768 00
Sinking fund paid		493,306 00
Unaccounted for		1,255,700 00

STATE OF TENNESSEE,
COMPTROLLER'S OFFICE,

I, Jas. L. Gaines, Comptroller of the Treasury of the State of Tennessee, do hereby certify that the foregoing is a correct statement as shown by the records and books in this office.

Comptroller's Seal.

WITNESS my official seal and signature, at Nashville, this 8th day of April, 1878.

JAMES L. GAINES,
Comptroller.

Name of Railroads that retired their Debts to the State of Tennessee, and Amount of Same, viz.:

East Tennessee, Virginia & Georgia	$ 4,117,000 00
Nashville & Decatur	2,700,000 00
Memphis & Charleston (of which $213,471.00 was paid as sinking fund)	1,875,000 00
Memphis & Ohio	2,396,000 00
Mississippi & Tennessee (of which $120,000.00 was paid as sinking fund)	420,800 00
Mobile & Ohio	1,684,800 00
Mississippi Central	1,199,000 00
Nashville & Chattanooga (of which $20,800.00 was paid as sinking fund)	395,000 00
	$14,787,600 00

Name of Railroads sold out, and Amounts brought by each.

Edgefield & Kentucky	$ 900,000 00
Cincinnati, Cumberland Gap & Charleston	300,000 00
Knoxville & Kentucky	350,000 00
McMinnville & Manchester	300,000 00
Winchester & Alabama	300,000 00
Rogersville & Jefferson	23,000 00
Nashville & Northwestern	2,400,000 00
Knoxville & Charleston	105,000 00
East Tennessee and Western North Carolina	20,000 00
Memphis, Charleston & Louisville	1,700,000 00
Tennessee & Pacific	300,000 00
	$6,698,000 00
	*21,485,600 00
Amount of bonded debt of the State, estimated January 1, 1870, about	40,000,000 00
	$18,514,400 00

*To which is to be added $707,000.00, Louisville & Nashville R. R., which was paid before the date at which the above debt of the State was estimated; hence, it is not deducted, making a total of $21,485,600.00.

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE,

[In Equity.]

CALVIN AMORY STEVENS, on behalf of himself and other holders of Tennessee State Bonds issued to the Memphis and Charleston Railroad Company,

vs.

The MEMPHIS AND CHARLESTON RAILROAD COMPANY.

The answer of Calvin Amory Stevens, to the cross-bill filed by William T. Walters, admitted as a defendant by stipulation :

This complainant, respondent to the Cross-bill which he has consented that William T. Walters might file subject to conditions specified in a certain stipulation, for answer to said Cross-bill or so much and such parts thereof as he is advised it is material for him to answer unto, but without waiving any benefit or right of exception thereto, that can or may be had to the same on account of the errors, uncertainties and imperfections therein contained.

Admits the existence of the several Statutes, public documents, and records, and private writings set out or referred to in the Cross-bill, but for greater certainty as to the contents thereof, prays leave to refer to the said documents upon the trial.

Respondent denies each and every allegation in the said Cross-bill with actual knowledge of which he is charged, and as to the other matters of fact alleged affirmatively in the said Cross-bill, except in the particulars above admitted, and respondent has no knowledge or information, and therefore demands strict proof of the same.

And the complainant further says, that the telegraphic letter of December 11, 1877, addressed by him to the Governor of Tennessee, and laid before its Legislature, was written for his signature by Richard T. Wilson, President of the Memphis and Charleston Railroad Company, and by him procured to be signed by this complainant, and by said Wilson sent to said Governor at a time when this complainant was wholly ignorant of the substitutions now claimed to have been effected, and by which it is alleged that the liens upon the railroads of the defendant company and other companies in the State of Tennessee have been satisfied, and that said telegraphic letter relates to bonds of the State of Tennessee, then held by this complainant, of which only a very small minority in amount were secured, or are now claimed to have been secured by any lien whatever.

Respondent is advised that he need not answer or controvert in this pleading the various conclusions of law and presumptions set forth in the Cross-bill, but that the same are best answered by the language of the Statutes of Tennessee.

Wherefore this respondent prays to be hence dismissed with his reasonable costs.

E. L. ANDREWS,
GEORGE HOADLY,
Solicitors and of Counsel for Complainant.

UNITED STATES OF AMERICA, *Southern District of New York.* } ss.:

On this 8th day of March, A. D. 1880, before me personally appeared Calvin Amory Stevens, who being duly sworn, says that the matters and things stated in the foregoing answer are true, so far as same are stated of his own knowledge, and so far as stated on information and belief he believes it to be true.

[L. S.] WILLIAM H. DE LANCEY,
Notary Public Westchester County,
Acting in New York County under, and by virtue of Chapter 807, of the Laws of 1873, of the State of New York.

Replication of William T. Walters. 1

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

CAVVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS AND CHARLESTON RAILROAD COMPANY, 2

versus

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY and THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY. 3

The repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said cross bill to be true, certain and sufficient 4 in the law to be answered unto; and that the said

Replication of William T. Walters. 1

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

2

CAVVIN AMORY STEVENS, on behalf of the Holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS AND CHARLESTON RAILROAD COMPANY,

versus

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY and THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY. 3

The repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that he will aver and prove his said cross bill to be true, certain and sufficient 4 in the law to be answered unto; and that the said

5 answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable Court shall direct; and humbly prays as in and by his said cross bill he hath already prayed.

6 MATTHEWS, RAMSEY & MATTHEWS,
Solicitors for Defendant.

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IN THE

UNITED STATES CIRCUIT COURT,

For the Middle District of Tennessee.

IN EQUITY.

Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes, on behalf of holders of Internal Improvement Bonds of the State of Tennessee issued to railroads,

vs.

The Louisville & Nashville Railroad Company,

and

Fifteen other suits on behalf of bondholders, against Fifteen other Railroad Companies.

SOME OF THESE SUITS ARE PENDING IN THE EASTERN, SOME IN THE MIDDLE, AND OTHERS IN THE WESTERN DISTRICT OF TENNESSEE.

OPINION BY S. L. WITHEY, DISTRICT JUDGE, WESTERN DISTRICT OF MICHIGAN.

SEPTEMBER 25th, 1880.

These are suits in equity pending in the Circuit Courts of the United States for the Districts of Tennessee, brought by complainants on behalf of holders of Internal Improvement Bonds of the State of Tennessee against various railroad companies to whom the bonds were issued, to aid in the construction of their several

lines of railroads, and against all other persons interested.

They were argued together in April and May last at Nashville.

The object of the suits is to have a lien in favor of the bondholders declared and established upon the railroads of the several defendant companies, and a Receiver appointed for the collection of the accrued and accruing interest, the interest having been in default since July 1st, 1875. The principal is not due.

The plaintiffs' contention is, briefly, that the Acts passed by the Legislature of the State of Tennessee in 1852, to grant aid to the railroad companies by a loan to them of the bonds of the State, imposed a lien upon the railroads, as security to the holder of the bonds and to the State—payment to the holder would operate as indemnity to the State. Inasmuch as the State and the companies are in default in the payment of the interest since July, 1875, the bondholders by these suits seek to have a lien in their favor established upon the roads.

Statement.

The General Assembly of the State of Tennessee passed, February 11, 1852, an Act known as the "Internal Improvement Act of the State of Tennessee," extending aid to railroad companies by a loan of State bonds, the proceeds to be used in ironing and equipping the roads. Prior to the time of passing the Act, there had been issued State bonds for various purposes, of which above three and a half million dollars were outstanding. The State of Tennessee was now in good credit, her six per cent. bonds brought a premium in the money markets of the world, as did also, subsequently, her bonds issued to the defendant railroad

companies under the Act in question, and Acts amendatory thereof, which bonds are the subject of controversy in these suits. The scheme of internal improvement now adopted was to issue to each Company six per cent. bonds to the amount of eight thousand dollars a mile in installments—afterwards extended to ten thousand dollars,—the first when a section of thirty miles of road was completed ready for the ties, and the subsequent installments upon completion of each additional section of twenty miles; afterwards changed to ten miles. The bonds are transferable by delivery, run not less than thirty nor more than forty years from the respective dates of issue. The interest matures semi-annually, and, with the principal, is payable in New York. They were paid to the railroad company and old in open market without endorsement or guarantee. The State was invested by the terms of the statute with a lien upon each section of the company's road as soon as the bonds for that section were issued, and upon final completion of the road such lien was to attach to the entire road and its equipments. The company was to be incapable of creating any lien conflicting with that in favor of the State.

The amount of the lien claimed by complainants in behalf of such bondholders upon all the railroads is about fifteen million dollars. The litigation, however, affects the holders of between thirty and thirty-five million dollars of other mortgage bonds secured upon these roads and issued under authority of the General Assembly conferred in 1869-70 to enable the aided companies to repay to the State the bonds loaned to them. The holders of the last-mentioned bonds claim to have a first lien upon the roads, and appear in these suits, with the defendant companies, to contest the lien

claimed by complainants and their associate bondholders.

The interest of the State debt was in default from July, 1861, to 1866, during the Civil War, when the price of her bonds had depreciated in value to less than fifty per cent. of their face. The storm of war left the railroads of the State without money, credit or rolling stock, and their roads and bridges going to decay. The first Legislature of Tennessee, after the storm had passed, assembled in 1865, when the State and the railroad companies were alike in a condition of bankruptcy. Provision was now made by the State to fund all her over-due bonds and interest coupons outstanding into new bonds. In 1866 and 1867 the State issued additional bonds to some of these railroad companies to aid them to build bridges and repair their roads, the State reserving a lien and imposing terms and conditions like those in the act of 1852, but somewhat modified.

In 1869–70 none of the principal of the railroad aid bonds issued under the acts of 1852, or acts amendatory thereof, had matured, but now the General Assembly of the State, to enable the respective companies to repay any part of the principal of their indebtedness for bonds loaned to them, passed an act permitting payment in any of the outstanding bonds of the State.

To obtain money to purchase State bonds for surrender, they were severally authorized to issue mortgage bonds upon their respective roads and equipments corresponding in denomination with the State aid bonds, and deposit them with the Comptroller of the State, to be by him delivered to the company or its agent whenever, and as Tennessee State bonds were by the company surrendered and cancelled. These mortgage bonds were by law declared to be a first lien on the road and equipments of the company issuing them,

and as evidence to the purchaser the Comptroller was required to and did certify upon each bond that it was "secured by first mortgage."

Many of the companies availed themselves of this legislation, and under its sanction and authority an aggregate of between thirty and forty million dollars of such mortgage bonds were by the companies issued and sold, and are now outstanding.

Other railroad companies did not avail themselves of the provisions of the law of 1869–70. They continued to be in default as to the payment of interest, and as to payment annually into the sinking fund required by statute. Proceedings by the State were therefore commenced in the State Court of Chancery, and decrees of foreclosure and sale obtained.

At the sale the State was purchaser. These foreclosed roads were subsequently sold by the State and new companies organized. Payment by the purchaser was made to the State in any outstanding Tennessee State bonds at their face value, and the purchaser was invested with all the right and title of the State.

The State, as before stated, had funded her over-due bonds and interest coupons into a new bond under the law of 1865, and in February, 1870, another act was passed to again fund unpaid interest that had accrued on the public debt, together with the floating debt of the State, and all that might become due up to 1874. Holders of Tennessee bonds, including holders of internal improvement bonds issued to railroad companies, generally accepted the provisions thus made for retiring over-due interest coupons, as they had done under the act of 1865. The State of Tennessee however, again defaulted in her interest January, 1, 1875,

and subsequently openly repudiated her bonded debt, for the payment of which the faith and credit of the State were solemnly pledged.

The Statute.

The Internal Improvement Act of February 11, 1852, will alone be referred to, as it contains all the provisions necessary to be considered. The lien is declared by the third section which is as follows:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section so prepared as aforesaid, including the road-bed, right of way, grading, bridges, and masonry, upon all the stock subscribed for in said company, and upon said iron rails, chairs, spikes and equipments, when purchased and delivered, and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with the said lien or mortgage without a deed from the company, for the payment by said company of said bonds, with the interest thereon as the same becomes due."

The requirement, by section five, as to the payment of interest is, that fifteen days before it falls due the company shall deposit in the bank of Tennessee—the State's fiscal agent—

"an amount sufficient to pay such interest, including exchange and necessary commissions, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, or furnish the evidence as aforesaid, it shall be the duty of the Comptroller to report that fact to the Governor,"

who is immediately to put the road into the hands of a Receiver to operate it in behalf of the State until the default is made good, and then to surreuder the road to the company.

By the section,

"The Comptroller is authorized, and it is made his duty upon his warrant to draw from the treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company as provided for in in this act, and the Comptroller shall report thereof to the General Assembly from time to time."

The requirement as to the payment by the company of the principal of the bonds by section seven is:

"That at the end of five years after the completion of said road, said company shall set apart one per centum per annum upon the amount of bonds issued to the company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall pay into the treasury of the State, after assigning them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit on the bonds issued to the company. And bonds so paid in and the interest accruing thereon, from time to time, shall be held and used by the State asa Sinking Fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it under the provisions of this act, they shall be credited as aforesaid and cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against, as provided in the fifth section of this act."

viz, as in case of failure to meet installments of interest.

It will be noticed that as these bonds were to be issued in installments at different periods, they would therefore fall due at different times.

The sixth section provides:

"That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the Attorney General of the district in which is situated the place of business of said company, of the fact; and thereupon, said Attorney General shall forth-

with file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court, to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds, by ordering the said railroad to be placed in the hands of a receiver, ordering the sale of said road, and all the property and assets attached thereto or belonging to said company, or in such other manner as the Court may deem best for the interest of the State."

By section twelve,

"the State of Tennessee expressly reserves the right to enact by the Legislature thereof, hereafter, all such laws as may be deemed necessary to protect the interest of the State, and to secure the State against any loss in consequence of the issuance of bonds under the provisions of this act; but in such manner as not to impair the vested rights of the stockholders of the companies."

What the parties claim.

Complainants contend that the statutory lien is to be regarded as an instrument of security taken for the benefit of the bondholders; or more fully stated, that the legislation and action of the State under it were effectual to fix upon the railroads respectively a lien not merely for the indemnity of the State of Tennessee, but also to secure the payment of its bonds to their holders; that the State became trustee of this lien for the benefit of the holder of the bonds, which lien inured to their benefit as *cestius que trusent* of the State, by force of the express contract to that effect in the law creating the security, as well as by necessary legal implication from the relations of the parties, which no subsequent dealings between the railroad companies and the State could discharge. Again it is said:

"the first or primary object of the act was to compel each aided company to pay its debt directly to its true creditor, the lender on the bonds. This was effected by the usual and proper process, a lien pure and simple for the payment of the bonds upon the estate of each aided company enforcible in equity in case of default."

On the other hand defendants' answers state the opposing view thus:

"that the said statutory mortgage was taken by the State in its own behalf and for its own benefit, and not as trustee for its bondholders, and that said statutory mortgage was conditioned solely for the payment by the Company to the State of the company's indebtedness to the State for the bonds loaned to it, and in respect of both principal and interest such payment was conditioned to be made by the company to the State before the corresponding amount of interest or principal would become due or payable by the State to the holders of the State bonds; * * * that by the statute two entirely independent and distinct debts were created, one from the State to the bondholders upon its bonds payable to bearer, resting upon the faith and credit of the State, the other an indebtedness from the railroad company to the State for the amount of the State bonds loaned to it, and that the statutory mortgage was given to secure this latter direct obligation from the railroad company to the State, with which the bondholders had no connection or concern."

It is further said that whether the engagement of the company was to pay to the State or to holders of the bonds is not important, and that if under the terms of the act it shall be held that the companies were to make payment to the bondholders, such payment was to be merely in relief of the State from the ultimate performance of its obligation—but all the while the obligation of the State remained—was to be in exoneration of the State but did not modify its undertaking on the bond and created no privity between the bondholders and the company. That such an undertaking by the company would be to indemnify the State by payment of the

bond in its stead, and that the obligation was to the State alone, and one in which no one else had or was intended to have any legal or equitable interest, much less any direct participation and right of intervention or control. That the relation between the railroad company and the holder of State bonds was that merely of vendor and purchaser of negotiable securities, passing by delivery and without endorsement and therefore created no relation between them of debtor and creditor.

Opinion.

I cannot refrain from expressing personally and officially my acknowledgements for the complete and exhaustive arguments by learned and eminent counsel which distinguished the hearing and submission of these important cases. I approach their consideration with all the aid which the most consummate and elaborate arguments can afford. The opinion will not extend over all the debated ground.

Have the holders of internal improvement bonds, loaned by the State of Tennessee to a railroad company, under the act in question, any enforcible right by contract or otherwise in the statutory lien that is reserved to the State of Tennessee for the payment of the principal and interest of the bonds as they matured? Section three provides:

"That so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid, they shall constitute a lien upon said section * * * and the State of Tennessee, upon the issuance of said bonds, and by virtue of the same, shall be invested with said lien * * * for the payment by said company of said bonds, with the interest as the same becomes due."

This section of the statute relates only to the first division of thirty miles, but the lien there declared is

by another part of the act applied and extended to each additional section of twenty miles as fast as completed, and finally to the entire road as security

"for the payment of all bonds issued to the company" (Sec. 4).

The lien upon the property of the company was effected by virtue of the statute upon the issue of the bonds by the State and their acceptance by the company. Unless an intention of the Legislature to secure the purchaser of the bonds can be implied from the act and the dealing of the parties, the claim of complainants to the relief asked in these suits rests upon a mere equity. There is no denial that it was the State of Tennessee which was invested with the lien, but it is said that she occupies the position of a surety holding security for the payment of the debt, which security the creditor—the bondholder—can upon default of the principal debtor—the railroad company—avail himself in equity; that default by the company and by the State in the payment of the interest having occurred, the State becomes and is a trustee of this lien for the benefit of the bondholder. It was the State and the railroad company that dealt together in this matter. The State dictated the terms upon which it would grant aid, and the company accepted those terms without reference to what the purchaser of the bonds would say or claim. The bonds were loaned by the State and passed over to the company to be sold for money to aid or accommodate the company. The bonds were accepted by the company upon the understanding and agreement: 1. That the state was invested with a lien upon the company's railroad and property to secure "the payment by said company of said bonds, with the interest thereon as the same becomes due." 2. That the inter-

est should be paid by the company to the financial agent of the State at least fifteen days before it should become due, or satisfactory evidence be produced that it had been paid or provided for; and 3, that the principal of the bonds should be paid by the company by means of a sinking fund in the State Treasury, created by the purchase and deposit therein of Tennessee interest bearing bonds, supposed to be adequate for the purpose of enabling the State to meet its bonds at maturity.

There is nothing in any of these stipulations out of which the relation of the State to the bondholder is changed from that of a principal debtor to a surety. Nor does it appear how the company becomes debtor to the bondholder in any degree whatever. There is no express promise on its part to the bondholder, nor is any contract relation implied between him and the company. Section three contains no language importing such promise. It declares merely that the State of Tennessee shall be invested with a lien for the payment of the bonds by the company. The State imposes the lien if its aid is accepted, and as a condition of the grant. The language may imply a promise by the company accepting the aid to pay the State, but there is no obligation of the company to pay the bondholder, resulting either from positive law or from contract express or implied.

The lien was clearly "reserved in favor of the State." It was the State of Tennessee that upon the issuance of the bonds was invested with the lien or mortgage without deed. No other lien could have priority over or come in conflict with the lien of the State. The company was to deposit the interest money and exchange with the State's fiscal agent at least fifteen days before it became due, or satisfactory evidence that the interest had been paid or provided. All the suits and proceed-

ings under the Act are given as remedies exclusively to the State. The State might have a decree and sell the road for non-payment of any bond. The bond was made by the State for the accommodation of the railroad company and was sold in open market, without any promise by the company, other than what is implied to the State by accepting the benefit of the Act.

There is no express declaration of trust on the part of the State. It is sought to raise a trust out of the language of the Act, and the principle is invoked applicable to a security given by a debtor to his surety conditioned that it shall be void if the mortgagor pays the debt on which the mortgagee is surety, viz: that in such case the mortgage will be held both as an indemnity to the surety and as a security for the debt; the surety being regarded in equity as trustee for the benefit of the creditor and as having no right to discharge or defeat the trust, unless it be to a purchaser for a valuable consideration without notice.

The rule is not questioned. But it is not conceived that this rule would control the express terms of a mortgage or other instrument of security, nor render wholly nugatory the effect of an express reservation of a right of disposition of the mortgaged property by the mortgagee as is provided in the statute under consideration.

It is not within the province of equity to import conditions into the mortgage. The conditions of this statutory lien were, that the company should deposit the interest money and exchange with the State's fiscal agent or furnish evidence of prior payment, and should also pay into the treasury the means of providing a Sinking Fund for the ultimate payment of the bonds. This dealing was to be with the State—as to the payment of the principal it must have been—as to the pay-

ment of interest it was optional with the company—and there being no express covenant by the company a compliance with the conditions named in the mortgage would discharge the lien.

We do not overlook a claim made by one of complainants' counsel, that the intention of the Legislature is to be ascertained by the language of the statute declaring the lien, but we think the statute must be construed together, and that the requirements put upon the mortgagor—the conditions of his mortgage—when read in connection with the declaration, many times repeated in the statute, that the lien is the lien of the State, should have great weight in determining the legislative intention. The meaning of the legislation is to be declared from the words and subject matter of the statute. It is the scope and meaning of the whole enactment, rather than the literalism of words and phrases that are to govern; the signification of the entire Act and not a single clause determines the intention of the law maker. Thus section six, considered with other provisions of the Act, is important as reserving to the State the right through proceedings in Court to sell the road, thereby discharging it from the lien imposed by the statute.

The fact that the State might discharge the lien in such way imports that there was no intention of the law makers to give a beneficial interest in the security to any one but the State. This view applies with peculiar force where the holder of the security is a State not amenable to the ordinary process of Courts.

This view of the effect of section six upon the construction as to legislative intent is not weakened but fortified by section fourteen, which declares that

"in the event any of the roads shall be sold under the provisions of the Act, it shall be the duty of the

Governor to appoint an agent for the State to attend the sale, and, if necessary to protect the interests of the State, buy in the road in the name of the State; and in case the State shall be the purchaser, the Governor shall appoint a Receiver who shall take possession of the road and property, and use the same as provided for in the fifth section of this Act, and said Receiver shall settle his accounts semi-annually with the Comptroller until the next meeting of the General Assembly."

This section imports three things at least as to a sale: 1, a third person may be a purchaser; 2, the State may be the purchaser; 3, that the purchaser obtains a title discharged of the lien. It is manifest that if a stranger buys he takes title freed from all liens imposed by the act upon the property, and there is nothing in the language of the section or in the act to indicate that the State, becoming purchaser, does not take the property equally free from such lien.

The Receiver appointed by the Governor is to take possession of the road and "use the same as provided for in the fifth section," that is, in like manner, viz.: "run the same and manage the entire road." This he is to do until the next meeting of the General Assembly, when by clear implication the future management or disposition of the road is left to legislative action.

The contract between the State and the company is that the State shall have a lien "for the payment by said company of said bonds," but it is nowhere required by the State, and therefore not assented to by the company, that the latter shall pay *to the bondholder*. It was urged that this language imports payment by the company to the only person then entitled to ask or enforce it. The language must, however, be understood to relate to other parts of the statute which prescribes specifically the manner of payment by the company, viz.: payment annually into the State Treasury of a sum to be employed as a sinking fund.

It is made optional, by section five, with the company, whether it will deposit the interest as it becomes due with the fiscal agent of the State or pay the same to the bondholder, and by section seven the principal was to be paid by setting apart annually after five years from the completion of the road a certain per centum of the amount of bonds issued to the company, invested in any bonds of the State and assigned to the Governor. This sinking fund provision would, within the period which the bonds had to run, place in the treasury of the State an amount sufficient to nearly or quite enable the State to pay the bonds. The Tennessee bonds were generally six per cent., and funded in those the time required would be thirty-three years and two months.

There is nothing in the act to indicate that after the company has complied with these provisions as to interest and sinking fund, and has thus provided the State with the means of payment, that the company was also required to pay to the bondholders. Certainly this was not the condition of the security, as the only way in which a default could occur was by failure of the company to provide for payment of the interest and principal in those specified ways.

But it is said the Sinking Fund was not to be commenced until five years after the particular road should be completed, and that that event might not take place at all or not till half or more of the time which the bonds had to run had expired, so that the period might be wholly inadequate in which to provide a sufficient Sinking Fund for paying the bonds when due, and that this indicates that the lien was not intended as security merely for payment by the company to the State by means of a Sinking Fund in the manner provided. A statute must be construed from the standpoint, the circumstances and surroundings of the lawmakers when

it was enacted; and it would be unjust and repugnant to reason and common experience to assume that the Legislature passed the act in the expectation that the roads would never be finished or would not be completed within a reasonable time. Besides section twelve reserved to the State ample powers to make such modifications in relation to the time for the Sinking Fund to commence and the per cent. annually to be paid into that fund as would fully protect the interests of the State against delay on the part of the railroad company.

Whatever might be said in regard to the evidence, adduced in these cases, of contemporaneous construction through the utterances of State officials in public documents, the action of any department of the State government or otherwise, there is, in the judgment of the court, nothing to change the views which have been expressed.

Chamberlain *v.* St. Paul and Sioux City R. R. Co., 92 U. S., 299, was decided upon a statute and upon facts similar to those in the present cases and is very instructive. The State of Minnesota by a constitutional amendment provided for an issue of its bonds as a loan to the Southern Minnesota Railroad Company, and required such company to convey the lands in question "in trust for the better security of the Treasury of the State from loss on said bonds," and further provided that if the borrowing company should make default in payment of either the principal or interest of the bonds issued by the State, the Governor should proceed to sell the lands held in trust by the State. The company accordingly executed a trust conveyance of the lands to the State, conditioned for the payment of the principal and interest of the bonds issued to that company. The company made default in the payment of interest. The State foreclosed and became the purchaser of the lands which she granted to another corporation, the de-

fendant in the Chamberlain suit. Chamberlain was holder of some of the State bonds, the payment of which was secured by the trust conveyance, and sought to have a lien upon the land declared in his favor.

In the cases at bar, as in that case, the State was primarily liable to the holder of the bonds. In the cases at bar, as in that case, the State reserved to itself the right of foreclosure and disposition of the property. In deciding that case, Justice Field after stating the position of the complainant, viz.: "that the interest which the State took under the trust deed and mortgage was only the right to hold them as security against loss upon its bonds, * * * that this interest was not changed by foreclosure of the mortgage and by purchase of the property by the State," uses the following language:

"The State was primarily liable to the bondholders; and it was only between her and the company that the relation of principal and surety existed.

It may be doubted whether the bondholders could call upon the company in any event. The endorsement made by the President simply transferred the bonds; it was not the act of the company. Be that as it may, whatever right the plaintiff had to compel the application of the lands received by the State to the payment of the bonds held by him, it was one resting in equity only. It was not a legal right arising out of any positive law or any agreement of the parties. It did not create any lien which attached to and followed the property. It was a right to be enforced if at all only by a Court of Chancery against the surety. But the State being the surety here, it could not be enforced at all, and, not being a specific lien upon the property, cannot be enforced against the State grantees."

This was said to be the law of that case, even if the bondholders could have called upon the company for payment. But laying this feature aside, the analogies are as before stated, and whatever right the plaintiffs

have to claim benefit from the security rests here as in that case as a mere equity; there was no legal right because the law did not impose one, and the company made no promise to the bondholders. Such equity created no lien which followed the property; the liability of the State was to the bondholder. She held no relation as surety to him; as in the Chamberlain case, it was only as between her and the company that in any possible view the State could be regarded as surety, and this view would make it necessary to treat the company as the principal debtor to the bondholder, whereas the company was not the principal debtor, nor indeed a debtor to the bondholder in any degree.

The reasoning in the case of Hand *v.* R. R. Co., in the Supreme Court of South Carolina—manuscript—referred to on the argument, cannot all be adopted as applicable to these cases if the conclusions might be.

It is not upon its fact authority. The railrond company made its own bonds and the State guaranteed their payment to the holder by endorsement. The State was secured by a lien upon the company's road, reserved by the statute which authorized the guarantee. As a surety the State assumed contract obligations to the creditor—the bondholder. If a creditor has a right to claim the benefit of security given by the debtor to his surety for the latter's indemnity, it does not follow that the right exists where the principal debtor takes the security from the accommodatee and where the security holder holds no other relation to the creditor than that of debtor, and the giver of the security is neither a debtor or surety to the creditor.

It becomes unnecessary to further consider the effect of the reservation of power to the State under section twelve. The court has already stated that such re-

served power is ample to authorize a modification of the sinking fund provisions, as has been done by increasing the amount to be paid annually into the Sinking Fund, and changing the time for such payment to commence.

It follows that by this judgment neither the foreclosed or the non-foreclosed roads are subject to any lien in favor of the holders of internal improvement bonds issued by the State of Tennessee, under the acts passed by that State, and to which reference has been made.

Other topics presented in the arguments need not be considered.

A decree will be entered in each case, dismissing the bill of complaint therein, with costs to defendants, and it is directed that such decrees be drawn and presented for approval.

1

Decree.

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT,

2

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVEN, who sues on Behalf of himself and other Holders of Tennessee State Bonds, issued to THE MEMPHIS AND CHARLESTON RAILROAD COMPANY,	In Equity.
vs.	3
THE MEMPHIS AND CHARLESTON RAILROAD COMPANY and THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY.	

This cause came on to be heard upon the bill of Complaint, the answers thereto, the answer and Cross bill of the defendant, William T. Walters, 4 and the answer of the complainant thereto, the replications and the proofs, and as argued by counsel for the respective parties, and the Court now being fully advised thereon, finds :

5 *First.*—The equity of the cause to be with defendants.

Second.—That the complainants are not entitled to the relief prayed for.

Third.—That the deeds of trust and mortgages set forth in the answer and Cross bill of the said William T. Walters, made to the said The Farmers' Loan and Trust Company and Adrian Iselin and
6 Adrian Iselin, Jr., are, in respect to the claim of the complainants, and of all other holders of the bonds of the State of Tennessee, originally loaned by the State to the Memphis and Charleston Railroad Company, the best and only liens and incumbrances on said property therein described; and

Fourth.—That in respect to the equity of the holders of the bonds thereby intended to be secured,
7 the lien originally reserved by the State of Tennessee, on account of its bonds loaned to the Memphis and Charleston Railroad Company, has been effectually discharged and released.

It is therefore ordered, adjudged and decreed, that the bill of complaint of the complainant be, and the same is hereby dismissed, and that the said William T. Walters, and all other holders of the bonds secured by the deeds of trust or mort-
8 gages, be forever quieted in their said rights and title under the same, against the claim of the complainant and all other holders of like bonds of the State of Tennessee, originally issued to the Memphis and Charleston Railroad Company, and that they be, and are hereby perpetually enjoined from hereafter, contrary to this decree, setting up their claim aforesaid.

And it is further ordered, adjudged and decreed, that the said complainant pay to the defendants the cost of this suit, to be taxed, and that defendants have execution therefor. 9

And thereupon came the complainant at the same time and prayed an appeal from the foregoing decree, which appeal is allowed, and the amount of the penalty of the bond to be given by them, is fixed at one thousand dollars.

10

Settled and approved this 30th day of October, A. D. 1880.

S. L. WITHEY,
Dist. Judge,
West. Dist. Mich.

11

12

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Settled and approved this 30th day of October, A. D. 1880.

S. L. WITHEY,
Dist. Judge,
West. Dist. Mich.

11

12

IN THE

Circuit Court of the United States

FOR THE WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
VERSUS
THE MEMPHIS & CHARLESTON RAILROAD COMPANY ET AL.

In the above named cause, determined by the decree of the said court, entered at the present term thereof, from which the complainants have prayed and obtained an appeal to the Supreme Court of the United States, and have given bond for such appeal and supersedeas, which bond has been properly approved, the defendants and appellees waive the issuance and service of a citation, and agree to enter their appearance in said cause in said Supreme Court, just as if the citation prescribed by law had been regularly issued and served on said defendants.

And said defendants consent that this stipulation may be filed in the above named court, and made a part of the record in said cause in said Supreme Court.

Memphis, Tenn., Jan. 8, 1881.

HUMES & POSTON,
Solicitors for Defendants.

Supersedeas Bond.

U. S. CIRCUIT COURT, 1

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

[*In Equity.*]

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY, and PETER GEDDES, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to THE MEMPHIS & CHARLESTON RAILROAD COMPANY, 2

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY and THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY. 3

Know all men by these presents, that we, Calvin Amory Stevens, Eugene Kelly and John T. Terry, resident of the City and State of New York, and Peter Geddes, resident of the City of Brooklyn, in the State of New York, and Eugene Plunkett and Solon Humphreys, residents of the same City and State of New York, are jointly and severally held and firmly bound unto The Memphis & Charleston Railroad Company, in the sum of one thousand dollars each, 4

to be paid to the said Memphis & Charleston Railroad Company and their successors, for which payments well and truly to be made, each of us doth hereby bind himself his heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 29th day of December, in the year of our Lord one thousand eight hundred and eighty.

6 Whereas lately, at a regular term of the Circuit Court of the United States, in and for the Western District of Tennessee, held by consent of all parties to the record at the City of Nashville in said State, a final decree was rendered in the said cause, dismissing the complainant's bill out of the said Court.

And whereas an appeal from said decree to the Supreme Court of the United States was prayed on
7 behalf of complainants in said suit, namely, Calvin Amory Stevens, Eugence Kelly, John T. Terry and Peter Geddes, which appeal was granted and the order granting the same was filed with the clerk of said Circuit Court.

Now the condition of the above obligation is such that if the said Calvin Amory Stevens, Eugene Kelly, John T. Terry and Peter Geddes shall prosecute the said plea to effect, and answer all damages and costs if they fail to make the said appeal good,
8 then the above obligation to be void, else to remain in full force and virtue.

CALVIN AMORY STEVENS, [L.S.]
EUGENE KELLY, [L.S.]
P. GEDDES,] [L.S.]
JNO. T. TERRY, [L.S.]
EUGENE PLUNKETT, [L.S.]
SOLON HUMPHREY, [L.S.]

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

On this 29th day of December, 1880, before me personally appeared Calvin Amory Stevens, Eugene Kelly, Peter Geddes, John T. Terry, Eugene Plunkett and Solon Humphreys, to me known and known to me to be the same persons described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same.

WILLIAM H. DELANCEY,
[L.S.] *Notary Public,*
Westchester & N. Y. Cos.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

CALVIN AMORY STEVENS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

CALVIN AMORY STEVENS.

Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Cos.

UNITED STATES OF AMERICA, } ss:
Southern District of New York. }

EUGENE KELLY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE KELLY.

13 Sworn to before me, this 27th day of December, 1880.

[SEAL.] WILLIAM H. DELANCEY,
Notary Public,
Westchester & N. Y. Co's.

UNITED STATES OF AMERICA, *Southern District of New York*, ss:

PETER GEDDES, being duly sworn and examined, deposes and says: I am one of the bondsmen
14 named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

P. GEDDES.

Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public*,
Westchester and N. Y. Cos.

15

UNITED STATES OF AMERICA, *Southern District of New York*, ss.:

JOHN T. TERRY, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

JOHN T. TERRY.

16 Sworn to before me, this 29th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public*,
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, } ss.: 17
Southern District of New York, }

EUGENE PLUNKETT, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my debts and liabilities and property exempt by law from execution.

EUGENE PLUNKETT.

Sworn to before me this 29th day of December, 1880. } 18

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Cos.

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

SOLON HUMPHREYS, being duly sworn and examined, deposes and says: I am one of the bondsmen named in the foregoing bond, and I am worth the sum of two thousand dollars over and above all my 19 debts and liabilities and property exempt by law from execution.

SOLON HUMPHREYS.

Sworn to before me this 27th day of December, 1880. }

WILLIAM H. DELANCEY,
[L.S.] *Notary Public,*
Westchester and N. Y. Co.

20

UNITED STATES OF AMERICA, } ss.:
Southern District of New York. }

WILLIAM H. FARRALL, being duly sworn, deposes and says: I am well acquainted with Eugene Plunkett, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars over and above all

his debts and liabilities and property exempt, by law from execution.

WILLIAM H. FARRELL.

Sworn to before me, this 30th day of December, 1880.

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public,*
Westchester and N. Y. Co.

UNITED STATES OF AMERICA, *Southern District of New York.* } ss.:

S. NEWTON SMITH, being duly sworn, deposes and says: I am well acquainted with Solon Humphreys, one of the sureties named in the foregoing bond, and know of my own knowledge that he is worth the sum of two thousand dollars, over and above all his debts and liabilities, and property exempt by law from execution.

S. NEWTON SMITH.

Sworn to before me this 30th day of December, 1880.

WILLIAM H. DE LANCEY,
[L.S.] *Notary Public,*
Westchester and N. Y. Co.

By the Honorable John Baxter, United States Judge, in and for the Sixth Judicial Circuit, Middle District of Tennessee.

I hereby approve the foregoing bond, as to form and manner of execution, and as to the amount thereof, and the sufficiency of the sureties, and direct that the same shall operate as a supersedeas.

Dated, January 6th, 1881.

JNO. BAXTER,
United States Judge.

United States Circuit Court.

SIXTH JUDICIAL CIRCUIT.

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
On behalf of holders of bonds issued to the East Tennessee and Virginia Railroad Company,
VERSUS
THE EAST TENNESSEE, VIRGINIA & GEORGIA R. R. CO.

SAME,
On behalf of holders of bonds of Tennessee issued to the East Tennessee and Georgia Railroad Company,
VERSUS
THE EAST TENNESSEE, VIRGINIA & GEORGIA R. R. CO.

SAME,
On behalf of holders of bonds issued to the Cincinnati, Cumberland Gap and Charleston Railroad Company,
VERSUS
THE CINCINNATI, CUMBERLAND GAP & CHARLESTON R. R. CO. ET AL.

SAME,
On behalf of holders of bonds issued to the Knoxville and Kentucky Railroad Company,
VERSUS
THE KNOXVILLE & KENTUCKY R. R. CO. ET AL.

MIDDLE DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
On behalf of holders of bonds of Tennessee issued to the Nashville and Chattanooga Railroad Company,
VERSUS
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

SAME,
On behalf of holders of bonds issued to the Nashville and Northwestern Railroad Company,
VERSUS
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.

SAME,
On behalf of holders of bonds issued to the McMinnville and Manchester Railroad Company,
VERSUS
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

SAME,
On behalf of holders of bonds issued to the Winchester and Alabama Railroad Company,
VERSUS
THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, ET AL.

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
On behalf of holders of bonds issued to the Memphis and Charleston Railroad Company,
VERSUS
THE MEMPHIS & CHARLESTON R. R. CO. ET AL.

It is hereby stipulated by and between the solicitors and counsel in the above named causes that testimony may be taken on behalf of the respondents in the States of Tennessee, Alabama and Georgia, before a special examiner to be appointed by the United States Circuit Court, or Judge thereof, and that such testimony may be taken without notice to the complainant's counsel; provided, that a copy of the direct examination be sent to the complainant's solicitor at New York, and not less than twenty days be allowed him for cross-examination after the taking of any deposition, and that notice by the complainant's solicitor, sent by mail to the special examiner at his usual place of residence, will be sufficient notice to the solicitor for the respondents.

This stipulation is to be without prejudice to either party in respect of any other matter connected with the litigations.

Dated New York, Sept. 13, 1879.

E. L. ANDREWS,
Solicitor for Complainants.

W. Y. C. HUMES,
Solicitor for Defendants.

Stipulation.

UNITED STATES CIRCUIT COURT, 1

SIXTH JUDICIAL CIRCUIT—WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, &c., on behalf of holders of bonds issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus 2

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, &c.

It is hereby stipulated and agreed that a letter dated Nashville, Tennesssee, August 8, 1877, addressed to P. Geddes, Esq., New York City, and signed by James L. Gaines, comptroller, a copy of 3
which is hereto annexed, may be read in evidence as a part of the deposition of P. Geddes in the above-entitled suit, subject to all legal objections and exceptions thereto; and also that the opinion of Charles F. Southmayd, Esq., a copy of which is also hereto annexed, be read in evidence in said suit on the part of the complainant, subject to all legal objection, and also in all the cases in which 4
Charles H. Tweed, Esq., appears as counsel.

Dated,

EVARTS, SOUTHMAYD & CHOATE,
E. L. ANDREWS.

NASHVILLE, TENN., Aug. 8, 1877.

P. GEDDES, ESQR.,
New York City:

Dear Sir: Your esteemed favor of 1st inst. rec'd. I very much hope that the indebtedness due the State by the Mississippi Central may be paid at an early date, and that this ugly factor may be entirely eliminated from the State debt. I am perfectly satisfied this Railroad indebtedness of these "Solvent Rail-
6 roads" has done much in the last few years in bringing about our present unfortunate troubles, and insidiously instilling into the minds of the people of the State a feeling and belief of *insolvency*. When the question is freed of this complication there will be fewer persons interested in "bearing" the bonds of the State.

As suggested in your favor, I have conveyed to Gov. Porter the substance of what you have written, as I had previously reported to him the sub-
7 stance of our conversation of 27th ult. His views in regard to a 75% proposition accord fully with those expressed by myself in the conversation above referred to. The "unfortunate intervention" of the Clearing House arbiters alluded to by you may have been instrumental to some extent, in establishing public opinion as it exists here now. No matter, however, what combination of circumstances may have caused this state of feeling, to any one at all acquainted with the temper of our present legisla-
8 ture, or with the views put forth by many of our men of influence and character, as well as the general state of feeling existing among the masses of the people, a proposition to compromise at a figure higher than 60% would be worse than folly. They would point at once to the Coe Commission, and say there is no necessity to argue this matter; here is a committee of gentlemen, in whose selection we

had no voice—representative men of financial standing, influence, &c.—leaning, if with any predilections, towards the bondholders, and this commission or these *arbiters* say that we ought not to pay more than 60c. Really a 75% proposition would be ridiculed, and I believe would injure materially the prospect of a final settlement. The best State credit men now concede that 60% is the best compromise that could be effected, and accept it as a fact. You will find every "State Credit man" advocating a 60% compromise, and a great many advocates of such a compromise have serious doubts as to its being carried, in case there should be an extra session. I think it can be carried, but it will require very careful handling. If, however, the question remain unsettled and become one of the issues in another State canvass next summer, the most disastrous and disgraceful results are to be feared. It is in the power of the creditors of the State to avert such a calamity. I recognize the fact that it would be a greater calamity to the State and to the citizens of the State, than it would be to the creditors of the State. As a citizen of the State, therefore, I feel deeply interested in seeing the question settled finally and satisfactorily if possible. And this interest is my only apology for the length of this letter.

With an earnest desire to serve you in this connection in any way in my power, officially or otherwise, and with assurances of the highest esteem, I am,

Yours truly,

JAMES L. GAINES,
Comptroller.

NEW YORK, Dec. 31, 1869.

MESS. R. T. WILSON & CO:

Gentlemen : We have examined the printed copy of the Act of the Legislature of Tennessee passed

February 25, 1869, authorizing Railroad Companies who have received aid from the State in its six per cent. coupon bonds, to make partial payments in Tennessee State Bonds on account of their indebtedness to the State for its bonds, so heretofore received, and thereupon to issue an equal amount of their own bonds, certified by the Comptroller as prescribed by the Act, which shall be a lien pro rata in amount, and of equal validity with the State's lien for the unretired portion of its bonds loaned to the company, and also the printed copies of the previous acts, under which the six per cent bonds of the State were loaned to the East Tennessee & M. R. R. Co., and the East Tenn. & Ga. R. R. Co., now legally consolidated under the title of The E. Tenn., Va. & Ga. R. Rd. Co., and a lien on the roads, &c., created in favor of the State for the amount of its bonds thus loaned, and we are of opinion that there is no such direct lien upon the railroads or other property of the Company, in favor of the holders of the State bonds loaned to and sold by the companies, as to prevent the State from giving pro rata release of lien for the amount of their bonds, and allowing bonds of the R. R. Co. to be issued with pro rata equality of lien, as provided by the Act of February 25, 1869. We think that that act is legally valid and operative acording to its tenor, and that upon compliance with its provisions by surrendering State bonds for cancellation the consolidated R. R. Co., above named, can make a valid issue of an equal amount of its mortgage bonds, countersigned by the Comptroller of Tennessee, according to the Act, which shall have pro rata equality of lien with the uncancelled portion of the company's indebtedness to the State for its bonds issued in aid of the roads.

Yours respectfully

(Signed,) EVARTS, SOUTHMAYD & CHOATE.

Deposition of R. T. Wilson.

United States Court, 1

SIXTH JUDICIAL DISTRICT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company 2

vs.

THE MEMPHIS & CHARLESTON R. R. Co., and the EAST TENNESSEE, VIRGINIA & GEORGIA R. R. Co. 3

Before WILLIAM H. DELANCEY,
Notary Public,
52 Broadway, New York.

Sept. 9, 1879.

Present—MR. ANDREWS, for Complainants; MR. HUMES, for Defendants; MR. TWEED, for Defendants. 4

RICHARD T. WILSON, a witness produced on the part of the Complainants, being by me first duly

5 cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

[Deposition taken subject to all legal objections of both parties.]

Direct examination by MR. ANDREWS:

1 Q. Please state your name, age and occupation?

A. Richard T. Wilson; banker and commission merchant; railroad President, and of full age.

6 2 Q. Please state what official positions you occupy in reference to the railroads of Tennessee?

A. I am President of the Memphis & Charleston R. R. Co., of the East Tennessee, Virginia & Georgia R. R. Co., and a Director in the Knoxville & Ohio R. R.

3 Q. Are you a stockholder in these companies, or any of them?

A. I am a stockholder in all of them at present.

4 Q. State when your connection with Tennessee
7 railroads began? what time?

A. In 1850, I think, or thereabouts. I first bought some stock in the East Tennessee & Georgia Railroad. I think it was about that time.

5 Q. At the conclusion of the war were you a stockholder in any of the railroads?

A. In the East Tennessee & Georgia and not in any other Railroad at the conclusion of the war that I think of now.

6 Q. At the conclusion of the war did you not in-
8 crease your interest in the stock or securities of the Tennessee Railroads?

A. Yes, sir.

7 Q. To what extent?

A. Well, I began to purchase stock in the East Tennessee & Georgia Road, some time, not immediately at the conclusion of the war. In 1866, '7 '8, '9, I purchased a pretty large amount of stock.

8 Q. How much?

A. That I cannot tell; but in round figures two hundred and fifty to three hundred thousand dollars was the maximum investment of the stock at par value.

9 Q. What amount of investment did that represent?

A. Well, I don't know without referring to books.

10 Q. Will you please produce your books at the adjourned examination?

A. I cannot undertake to do that.

11 Q. Why not?

A. I don't know that you could find the account from the books; it is in memoranda, one thing and another, and I have got no books that really show it.

12 Q. Please produce the memoranda at the adjourned examination?

A. I don't think I can do that.

13 Q. Why not?

A. I don't think these questions are pertinent to the case. I am only answering for your accommodation.

14 Q. Do you decline to produce memoranda or books?

A. I decline to produce them unless advised by the Court.

15 Q. Are you a holder of bonds of any of these roads?

A. I am.

16 Q. To what extent?

A. I hold of Knoxville & Ohio bonds about forty thousand dollars. I hold a few of the East Tennessee & Georgia bonds divisional, and East Tennessee and Virginia divisional bonds—I think it aggregates about the sum of twenty thousand dollars or under.

17 Q. The Memphis & Charleston?

13 A. I hold largely; I suppose myself and firm have six or seven hundred thousand dollars.

18 Q. Those are the new so-called substitution bonds?

A. No, not all.

19 Q. How many of them?

A. I think about four hundred and fifty thousand dollars.

20 Q. The stock that you bought in these Tennessee roads did not cost more than fifteen cents;
14 did it?

A. Yes, sir.

21 Q. How much more.

A. It cost an average of thirty or thirty-five cents, may be forty.

22 Q. Some was bought as low as fifteen?

A. No, none of it lower than nineteen that I now remember.

23 Q. The great part of it?

A. No, not the great part of it; very little of it was
15 bought lower than nineteen cents; none of it in fact that I now remember of; I paid for some of my stock from sixty-five to seventy-five cents and even more.

24 Q. I refer to stock bought soon after the war?

A. I think it cost on an average from thirty-five to forty cents.

25 Q. The Memphis & Charleston bonds, what did they stand at?

16 A. We paid seventy-five cents on the dollar for those.

26 Q. When did you first hold an official position in any Tennessee railroad?

A. As President, I was elected in the summer or autumn of 1870.

27 Q. As director?

A. As director, in 1868 or 1869.

28 Q. What were the prices of Tennessee bonds when you became director? 17

A. That I can't state certainly, but the reports of the New York Stock Exchange show.

29 Q. Well, very much below par?

A. O, yes; they were below par.

30 Q. Who drafted the Tennessee Act of July 25th, 1869?

A. I don't know who did draft that; the first that I ever heard of the act was about this ——

31 Q. What do you know about the formation of it? 18

A. In the autumn of 1868, I was asked by Mr. Branner, Mr. Calloway, and perhaps some others, to help devise some plan by which the railroads could raise a fund with which to retire at least a portion of their indebtedness to the State of Tennessee in an amount equal to the Sinking fund payments. The law in regard to payments into the sinking fund had been suspended from time to time and was then to take effect in 1870 at 19 four per cent. per annum. It was manifest to the companies, as their officers then told me, that they could not meet their sinking fund payments together with their other liabilities under their then worn out and dilapidated condition. I was asked if I could sell a bond on the railroad with which to provide a fund in such an amount as would probably meet the sinking fund payments. At that time I told them I did not think it was possible to sell a bond that they were then able to make. That their 20 own company bonds then outstanding and coming subsequent to the State lien were probably worth about forty-five to fifty cents on the dollar, and that any bond that they could make would be upon a parity with that bond, that is, it would come behind the lien of the State, and that it would not bring the then price of Tennessee bonds, which was I think in the sixties.

Judge Nelson who was then, I believe, the counsel for the East Tennessee and Virginia Railroad, of which John Branner was President, was called in to devise some plan by which the roads could retire so much of their indebtedness as their friends would take, and thereby raise a fund to meet their sinking fund payments, and in that conference it was suggested whether a plan could be devised by which the lien of the State could be proportionally transferred to a new bond and kept in operation. Then there was some discussion how it should be done —I drew up some memoranda, he and myself together—he took it, and that's the last I heard of the formation of the Act of 1869. The object of that memorandum was, as I say, to provide the right of substitution. There was no thought of conferring any new privilege upon the railroad companies in respect to the things with which they could pay the State. All agreed that we could pay our debts in any bonds of the State. We had the example of the Louisville & Nashville Railroad, which had paid off their debt in this way. The Legislature was glad to get them. The authorities of the State were urging them to pay off in any bonds they could (the roads I mean). The object of that Act was to facilitate broken down roads, that had no credit like we were, to raise a fund with which they could probably pay off at least as much of the indebtedness as would equal the sinking fund payments which were shortly to begin. At the time the Act was passed we thought that any road of so little credit as the East Tennessee Road, and in fact almost every other road except perhaps the Louisville & Nashville and the Nashville & Chattanooga Road had not sufficient means to meet the sinking fund payments, which had been postponed from time to time at the request of the roads, though all agreed it was asking more

than should be asked of the State of Tennessee to 25
further suspend the sinking fund payments. The object and purposes of this act were to facilitate the roads, of poor credit to transfer the lien which the State held to their own bonds, and thus enable them to retire the bonds of the State and pay their own debt to the State ; that was the great object of the Act that I heard of in the autumn of 1868. I came home after a general understanding that Judge Nelson should go on and elaborate it. I paid very little attention to that Act until next 26
year ; some time after it was passed Mr. Murdoch of the Mobile and Ohio Road afterwards informed me that he drew the original act. The Act as passed was not such as the memorandum I drew, and was not in all respects what I thought was to be passed.

32 Q. Wherein did it differ from the draft ?

A. The main difference as I now remember, and there were quite a number of differences, was a foolish provision which limited railroad companies who 27
had issued second mortgage bonds, to paying in the same series of bonds, that had been loaned them, but that did not affect us, for we had issued no second mortgage bonds, as we supposed.

33 Q. Was not another of these foolish provisions in these words "provided that the interests of the bondholders should not be affected" ?

A. I don't know about that ; it was not in it when I saw it.

34 Q. You know Mr. Calloway very well ? 28

A. Yes, I know Mr. Calloway very well.

35 Q. He was an officer of the East Tennessee, Virginia and Georgia Railroad ?

A. He was President of the East Tennessse, Virginia and Georgia Railroad.

36 Q. Of course that company assisted in procuring its passage by the Legislature ?

29 A. I don't know that it did.

37 Q. What do you think about it?

(Objected to.)

38 Q. Don't you believe that the East Tennessee, Virginia and Georgia Railroad company, or the companies then comprising what is now that company, had agents and representatives in Nashville to advocate the passage of that bill?

30 (Objected to as immaterial and irrelevant.)

A. That's the answer I make; it's immaterial and irrelevant.

(Complainant's counsel excepts to the answer.)

39 Q. Why did not the East Tennessee and Virginia R. R. Co. and the East Tennessee and Georgia Railroad Company proceed to take action under
31 the Act of 1869?

A. For the very reason that they could not find any financier or capitalist who would supply the needed funds; they tried it over and over again and failed during the entire year of 1869 and well up into 1870.

40 Q. What do you know of the Act of January 20, 1870?

A. Nothing whatever about it that I now remember of.

32 41 Q. You have read, it have you not?

A. Yes.

42 Q. Did you not read it before the East Tennessee, Virginia and Georgia Railroad Company undertook to deliver to the State some of its bonds?

A. I think I did; that is my recollection that I did.

43. Q. Your firm of R. T. Wilson & Co. were

the fiscal agents of the State of Tennessee for a 33
time?

A. No, sir; I don't think they were; if they were I have forgotten it.

44 Q. Well, they have had financial transactions with the State of Tennessee?

A. I think they occasionally lent them some money as other bankers, but that they had any other connection with the State I don't remember.

45 Q. How does it happen that the comptroller of Tennessee refers to R. T. Wilson & Co. as the fis- 34
cal agents of the State of Tennessee?

A. If he has ever done so it has escaped my memory. If you have a report and will let me see it, perhaps it may refresh my memory.

(Respondent's counsel requests that the report referred to be shown. Complainant's counsel declines for the present.)

46 Q. Now, after the East Tennessee Virginia 35
and Georgia Railroad Company commenced to act under the legislation you have been testifying about, through whom were their transactions in the City of New York conducted?

A. Partly through R. T. Wilson & Co., and partly through the Fourth National Bank.

47 Q. You referred previously to Mr. Murdock the Mobile and Ohio road, R. T. Wilson & Co., also attended to transactions for that company, did they not? 36

A. They did, in conjunction with other parties.

48 Q. What other parties.

A. I don't remember who all were in that syndicate; they were principally A. Iselin & Co., and Duncan, Sherman & Co.

49 Q. Was not William H. Hayes one of them?

A. He was not.

37 50 Q. Well, you employed agents and brokers in transactions in Tennessee bonds under this legislation, did you not?

A. In purchasing Tennessee bonds?

51 Q. Yes, sir.

A. Nearly all the bonds that I ever purchased were purchased through regular brokers here in the city of New York.

52 Q. Please give their names?

A. They would be very numerous.

38 53 Q. All that you remember.

A. Let me have time to refresh my memory on the subject before I answer that question.

54 Q. During the time you were purchasing Tennessee bonds, or about that time, were you not also a seller of Tennessee bonds?

A. Yes, sir; I bought and sold Tennessee bonds.

55 Q. And a borrower?

A. Yes, sir; borrowing generally as bankers do.

56 Q. You would sell and borrow quite largely

39 at times?

A. Yes, sir; my transactions were considerable in them.

57 Q. What were the prices at the time you commenced to purchase under this legislation you have referred to?

A. Well, I suppose it might be fifty-four or fifty-five cents.

58 Q. When was that?

A. The 15th day of April, 1870, I suppose is what

40 might be defined as the date of the first transaction I ever had under this legislation.

59 Q. About the same period with this legislation had not your companies or some of them refused to pay any interest in cash or a part of the interest in cash, and had tendered coupons of Tennessee bonds?

A. I don't know. I have no knowledge on that subject that I now remember of.

60 Q. Well, shortly after you commenced pur- 41
chasing was there not a decline in bonds?

A. No; on the contrary they advanced as I now remember.

61 Q. How long after you commenced buying did they decline?

A. They advanced, I say, as I remember.

62 Q. How long after did they decline?

A. Until they did decline; that I can't answer. The Stock Exchange reports will show.

63 Q. Didn't they decline within a moderate period 42
after?

A. It is my impression they did not, but I cannot speak advisedly; my impression is they went up.

64 Q. Immediately?

A. Not immediately, but gradually.

65 Q. Well, didn't you pay any lower price during all your purchases than the price you paid for the first purchases?

A. Well, I can't say as to that. We would have 43
to go to the records of the Stock Exchange for that.

66 Q. Won't your books show it?

A. I reckon they would show it, but the Stock Exchange is public and my books are private property.

67 Q. Did you buy all these bonds on the Stock Exchange?

A. I think almost every bond, if not quite all.

68 Q. How many do you think you didn't buy 44
on the Stock Exchange?

A. I don't remember to have bought a single bond out of the Stock Exchange, if I did it was very few. I should say not more than one hundred thousand dollars.

69 Q. In reference to these new bonds issued by the companies, at what price did the East Ten-

45 nessee, Virginia and Georgia sell at to the original purchasers?

A. Eighty two and a half cents or a little over, the first million.

70 Q. Who were the purchasers?

A. Messrs. A. Iselin & Company principally

71 Q. They were also purchasers of the Mobile & Ohio new bonds, were they not?

A. Well, no; not in the same sense. The Mobile & Ohio bonds were I suppose purchased by a
46 syndicate

72 Q. Who formed that sydicate?

A. Messrs. A. Iselin & Company, Duncan, Sherman & Company, and R. T. Wilson & Co.—they are all I now remember.

73 Q. Was not the opinion of Charles Tracy attached to the prospectus for the sale of the new Mobile & Ohio bonds?

A. It was. That is an opinion as to the validity of the substitution was attached to it, but this
47 opinion did not touch upon the subject of the lien of the holders of Tennessee bonds.

74 Q. You read the opinion of Davies and Davis?

A. I saw it, but I don't think that I read it.

75 Q. You knew all about it at that time?

A At the time of the sale of the Mobile & Ohio bonds or at the time of the sale of the East Tennessee, Virginia and Georgia bonds?

76 Q. Take the East Tennessee, Virginia and Georgia?

48 A. My recollection now is that that opinion came to my attention in the autumn of 1870; I should think so from some circumstances that occurred about that time with which I connect that opinion.

77 Q. Did you attach that opinion to any prospectus for the sale of the bonds of the East Tennessee, Virginia and Georgia?

A. I did not. I never issued any prospectus for

the sale of the East Tennessee, Virginia and Geor- 49
gia Railroad bonds that I now recollect of.

78 Q. Did you attempt to give it publicity in any way; the Davies & Davis opinion?

A. I only saw one copy, and the only publicity I gave it, was to take it to firm of Evarts, Southmayd & Choate. Mr. Southmayd told me it was of no value whatever, and so did another one of that firm.

79 Q. Then in offering the East Tennessee, and Virginia bonds and Mobile and Ohio bonds, or 50
either of them, you did not make any reference to the Davies & Davis opinion?

A. Well, it is proper to say that the Fourth National Bank were offering the East Tennessee, Virginia and Georgia bonds, and I never offered the East Tennessee, Virginia and Georgia bonds, or the Mobile and Ohio bonds unless I did so as the agent of the bank in the case of the East Tennessee, Virginia and Georgia bonds that I now remember.

80 Q. You were in frequent communication with 51
the Fourth National Bank?

A. Yes, sir.

81 Q. They knew of the opinion?

A. Yes, sir; they saw it I think, but that I am not certain of.

82 Q. Did they offer it to the public in any way?

A. Not that I am aware of.

83 Q. The Memphis & Charleston Road delivered bonds to the State of Tennessee when?

A. It never delivered any. Mr. Iselin, of Iselin 52
& Co., bought the lien on that road from the State with his own funds, and took an assignment of that lien under the provisions of law.

84 Q. That is the same Iselin to whom you showed the Davies & Davis opinion?

A. I did not show it to him.

85 Q. He knew of it?

A. I am not sure that he did.

53 86 Q. Were not you and Mr. Iselin present in the Supreme Court of the United States when this question of the lien of Tennessee bonds was being argued in the month of May, 1878?

A. I was present.

87 Q. At that time these Memphis & Charleston Railroad bonds had not been sold or negotiated?

A. They had then been sold.

88 Q. Had they been assigned?

A. Oh, yes, I think so, long before that.

54 89 Q. Well, there had been a bill pending before the United States Courts, involving that question, for some months before that time, had there not?

A. Well, as to what question that bill involved I must refer you to the records of the case: you are more familiar with it than I am.

90 Q. Have not those Memphis and Charleston bonds been lately placed on the Stock Exchange?

A. Yes, sir.

91 Q. Did you furnish the New York Stock Ex-
55 change with a copy of the Davies & Davis opinion?

A. I did not.

92 Q. Are they now being offered for sale?

A. I don't hear of any being offered.

93 Q. You said that you did not think that you had bought more than a hundred Tennessee bonds outside of the Stock Exchange. Where were those seven hundred and seventy odd old Tennessee and Pacific issues bought?

A. They were bought in the New York Stock
56 Exchange, every bond of them, or else I got them in return for bonds loaned.

94 Q. At what price?

A. I can't give the price, I don't know. But whether I bought them or received them in return for bonds, I don't know; in either case they were got in the regular way, just as every other bond that was bought, sold or borrowed or repaid. I did

not know they were Tennessee and Pacific bonds 57
when I got them, I never knew what road the bond was issued to that I got; I had no means of knowing this at the time I bought the bonds.

95 Q. When you borrowed bonds as you stated what was the object of borrowing them?

A. I borrowed bonds frequently, as I wanted them for business puposes.

96 Q. Was it not because you had sold bonds which you did not have to deliver?

A. That question infringes on my private trans- 58
actions. It might have been for that, or it might have been because I wanted to raise them for railroads. I borrowed them for a variety of purposes.

97 Q. You said your transactions were very large on account of the railroads?

A I didn't say on account of the railroads, did I? I think you are mistaken.

98 Q. Under these substitution laws you said?

A. No, I do not say that; I said I was employed as a banker. 59

99 Q. Didn't I understand you that you acted largely as a banker for the railroad companies, in obtaining bonds to deliver under these substitution acts?

A. Yes, purely as a business transaction.

100 Q. Now, when you were employed as banker to buy these bonds on behalf of the Railroad Companies which I referred to in the first instance, when you borrowed bonds about that time, was it not because you had sold bonds and therefore had none to 60
deliver?

A. Not always, by a good deal; now, for instance in the East Tennessee and Virginia Railroad I borrowed some bonds to pay that debt before I could buy them; it took time to buy them.

101 Q. Then after you bought them, or had borrowed them, I should say, to pay off this debt with,

61 and you afterwards had to buy them, didn't you try to buy them as cheaply as possible?

A. It certainly would be reasonable to suppose so.

102 Q. It was then your interest to have Tennessee bonds as low as possible?

A. It was to my interest, or the interest of my principal, to buy them as cheap as possible.

103 Q. To have them as low as possible?

A. I answer as I have.

62

(Answer objected to by complainant's Counsel.)

104 Q. You also participated in transactions which took place under the act of the Tennessee Legislature for the sale of certain railroads, did you not?

A. Not directly.

105 Q. Well, how directly?

63 A. Not individually I mean.

106 Q. Or through your firm?

A. Do you mean for supplying bonds to different roads; is that what you mean?

107 Q. Well, did you do anything under those acts?

A. Not that I remember as a firm.

108 Q. Well, in supplying bonds?

A. Yes, sir; in that way we did; we bought bonds for some of the parties who bought some of the

64 roads.

109 Q. Don't your name appear as interested in some of those purchases?

A. Yes, as trustee for the East Tennessee, Virginia and Georgia Railroad.

110 Q. That was what road?

A. The Cincinnati, Cumberland Gap and Charleston Railroad.

111 Q. You were concerned in getting bonds for 65
that purpose?

A. Yes, I bought bonds of that company for that purpose as near as I remember.

112 Q. You were cognizant, then, of the proceedings that took place in Tennessee for the sale of the roads, were you not?

A. In a certain sense I was; I saw the paper advertisements, and also as trustee allowed my name to be used for the purchase of that road. In another sense, as to keep up with the judicial pro- 66
ceedings closely, I was not cognizant—in a general public way I knew of it.

113 Q. Do you know of a report made by the State Commissioners, that stated that the lien of the Tennessee bonds was one of the difficulties to be encountered in effecting the sale of the roads?

A. No, I do not; if there ever was such a report made, it has escaped my memory; I don't think I ever saw it. All that I remember on that point was Chancellor East's decision, a newspaper copy of 67
which I saw, in which he decided that the bondholders had no lien. If the commissioners made an adverse report I do not remember; I knew nothing about it.

114 Q. Did you make any effort to call to the attention of Tennessee State bondholders in this city, that the questions in reference to paramount liens on railroads in Tennessee were then under adjudication?

A. I don't think I did. 68

115 Q. If you had called that fact to their attention don't you think it would have enhanced the price of Tennessee bonds?

A. I didn't consider myself the agent of the bondholders, or that it was my duty to make any such publication of so fanciful a theory as I always believed that to be.

69 116 Q. Then I understand that you did nothing whatever to divulge any claim which was advanced in respect of the interest of Tennessee bondholders in the railroads of the State?

A. I did nothing in their behalf, as I have already stated; I did not consider myself their agent.

117 Q. You stated that these new bonds of the East Tennessee, Va. & Ga. R. R. brought into the Company 82½ cents?

A. I said they were sold at 82½ cents.

70 118 Q. How much did the Company receive?

A. They received 80 cents for the first lot of them, and an additional bonus of $4,500 for the first lot of a million; after that they commenced getting higher prices, and did get higher prices; ran up to 90 cents.

119 Q. Who got that difference between 80 and 90?

A. The Company in every instance. They sold the first lot at 82½, and the bank—the 4th National
71 Bank—and the parties selling them got a commission.

120 Q. Who were those parties?

A. There was a contract that the bank was to sell them, and it employed other parties giving, one and a quarter per cent. commission on the sales.

121 Q. Was that contract in writing?

A. Yes sir, it was in writing.

Please produce a copy at the adjourned
72 examination.

122 Q. What did the State bonds cost the Company?

A. Fifty-five cents on the dollar for the whole lot.

123 Q. Did not the railroad companies in which you were interested endeavor to procure the passage of the Act of January 20th, 1870?

A. I was not present at that session of the Legis- 73
lature, and have no personal knowledge on the subject.

124 Q. Was there nothing done at the meetings of the Board in reference to it?

A. Not at any meeting that I remember of when I was present.

125 Q. Was there anything done at any of the meetings?

A. I have seen no record of anything of the kind, I think it probable that they desired its passage as 74
far as I know.

126 Q. When these purchases of Tennessee bonds were made of what were known as the new bonds issued after the war, were they selling lower than those issued before the war?

A. There was a slight difference at that time as I now remember. I have seen the new bonds sell higher, and I have seen them sell lower; the new bonds were, however, generally slightly below the price of old bonds, which difference is correctly 75
shown by the reports of the New York Stock Exchange.

127 Q. A large proportion of the bonds delivered by the roads referred to were new bonds, were they not?

A. Yes, sir; but I don't remember the number or relative proportions of new and old bonds.

128 Q. That was the case with these seven hundred and forty bonds of the Tennessee and Pacific roads, was it not? 76

A. I don't remember them as bonds that were issued to the Tennessee and Pacific Railroad. The Tennessee and Pacific Railroad was built since the war, and therefore it is reasonable to conclude they were new bonds.

129 Q. Hadn't you or your firm made a loan on the Tennessee and Pacific R. R. bonds before you became a purchaser of them?

77 A. Not that I know of. No, I think not.

130 Q. Was there not a loan made on them?

A. I don't know whether there was or not.

131 Q. Were you connected with the Memphis & Charleston R. R. in 1872?

A. I don't think I was.

132 Q. When you became an officer of Tennessee railroads after the war, had the railroad companies then possession of their property, or were some of them in the possession of the United State Govern-
78 ment?

A. They all had possession as near as I can remember.

133 Q. They had received them from the United States Government?

A. Yes.

134 Q. They had accepted the conditions on which the United States Government had agreed to turn them over?

A. I should say they had. The records of the
79 office will show better than I can tell.

135 Q. Didn't you or one of your firm send to the father of the complainant in this cause to borrow from him Tennessee bonds?

A. At what time?

136 Q. At any time?

A. Not that I remember of. He was frequently in the house; he was an acquaintance of Mr. Bosher.

137 Q. Do you know Dempsey Weaver?

80 A. Yes, sir.

138 Q. Was he a stockholder in Tennessee roads?

A. I don't know that he was. I think he was not. I wish to say further about Mr. Stevens, the father of complainant, that he was frequently in the house, conversed about Tennessee bonds, railroads, and other things; but whether he was ever applied to for the loan of his bonds I don't know.

139 Q. You testified before the Committee of the 81
Tennessee Legislature during the present year, did you not?

A. I did.

140 Q. You remember a suit instituted in the City of New York, to obtain an injunction against the payment of principal and interest of some Tennessee bonds?

A. When?

141 Q. At any time?

A. That runs over a very long space of time. 82

142 Q. Did you know of such a suit?

A. I did not know of it. I heard a suit was instituted to compel the State to pay some past due bonds, which under the law were preferred over the interest.

143 Q. Didn't you know of it about the time it was instituted?

A. Yes, sir, I heard of it about the time the suit was instituted, that such suit was or had been instituted, that was in 1868, as I remember, May or 83
June.

144 Q. About that time did you not purchase Tennessee bonds?

A. I don't think I did.

145 Q. How much did the Mobile and Ohio bonds sell for?

A. I can't answer that from memory.

146 Q. How much did the company receive?

A. That I can't answer from memory.

147 Q. Was there not a difference from what 84
the company received and what the bonds sold for?

A. That I can't answer from memory. As I remember they were bought at 82, perhaps 85, possibly 80 cents on the dollar (but this is from memory only). They have sold at various prices since they left the hands of the company.

85 148 Q. I don't mean that at all. I mean was there not a difference in price at which the syndicate took the bonds and the prices they sold them to the public?

A. I think there was, but how much I don't know. They were sold in Europe, and are largely owned by foreign bankers.

149 Q. You are familiar with the opinion of East, Pryor & Baxter?

A. I have seen it.

86 150 Q. When did you first see it?

A. I think I first saw it sometime in the autumn of 1870, probably 1871. I can't call to mind when I did first see it.

151 Q. Then you were conscious when you entered into these transactions for the purchase of Tennessee bonds and the issuance of the new bonds claimed to hold the lien, that there was a question as to the rights or existing as to the rights of the holders of Tennessee State bonds?

87 A. You say I was conscious of this claim. My legal advisers told me the opinion of Davies & Davis was utterly worthless. I so read the law myself and so believe it to be. I was not aware of this question at the time I entered into the purchase of Tennessee bonds.

152 Q. You were conscious at the time you participated in the issuance of the new bonds?

A. I don't believe I ever heard that that question had been raised by the bondholders then; the East
88 Tennessee, Virginia, Georgia R. R. Co. had paid its debt to the State.

153 Q. But you knew of it before the bonds were all sold?

A. In the case of the East Tennessee, Virginia and Georgia. I knew of it before they were sold. I mean the Davies & Davis' opinion.

154 Q. And also of the Mobile and Ohio?

A. Yes, sir. This question was not much considered; we considered it wholly mythical—no foundation in fact for it. 88

155 Q. Don't you know that quite a large amount of the bonds delivered by these companies to the State of Tennessee had never been in current circulation in the hands of the public?

A. No; I do not.

156 Q. Didn't you get some of them from or through some of the officers of the company?

A. I don't call to mind I ever did. If I did it has escaped my memory. 90

157 Q. Don't you know that the public officers of the State of Tennessee, or some of them, stated in their official reports that the railroad companies of the State depreciated the price of Tennessee State bonds for the purpose of purchasing them under these Acts?

(Objected to as irrelevant.)

A. I do not know of any such reports being made. If there were it has escaped my memory. 91

158 Q. Suppose you had gone into the market as an agent for the purchase of Tennessee State bonds, and purchased them straight along from day to day, or at stated intervals from week to week, would not that in a short time, with the large amount of bonds you were to purchase, so greatly enhance the price of Tennessee State bonds as to have made their purchase very much more expensive?

92

(Objected to as irrelevant.)

A. The best answer I can give to that is the effect that the purchases did produce on the market. It enhanced the price of bonds considerably, as I now remember.

159 Q. Suppose you had not sold bonds during

93 that interval, would there not have been a still greater enhancement of price?

(Objected to.)

A. I would have executed orders very injudiciously if I had told Mr. A, B or C, I was obliged to have his bonds.

160 Q. Do you decline to answer?

A. That is my answer.

161 Q. Was not J. C. Mabry the person who dealt
94 for you in transactions in Tennessee bonds at the time you are referring to?

A. Not that I remember, but I don't propose to give you a schedule of the progress of my general business in New York.

162 Q. Will you produce your books showing the transactions in Tennessee bonds on account of these railroads?

A. I will not.

163 Q. Will you produce those portions of them?
95 A. No.

164 Q. Have you no accounts entered into with those railroad companies at that time?

A. In some of them. What railroad companies do you speak of?

165 Q. The East Tennessee and Virginia, the East Tenuessee and Georgia, and other railroads named in the title. Will you produce those accounts?

A. I refer to my counsel on the subject; if they decline to do so I will let you know.

96 166 Q. Will you produce those accounts showing very large sales of Tennessee bonds?

A. If I produce the account they will speak more accurately than I can here.

167 Q. Why did you not afford the purchasers of the New so-called substitution bonds or the New Mortgage bonds of these R. R. companies, issued for the alleged extinguishment of this lien, so

far as claimed by you, why did you not afford them 97
the same opportunity of judging whether Tennessee State bonds were liens upon the R. R's as you had for yourself, through the legal opinions which had been published?

(Objected to.)

A. You refer to the Davies & Davis opinion?

168 Q. Yes, sir?

A. As far as I know every bond cited the law 98
under which it was issued, and they were public laws, and every man had sufficient opportunity of judging of the legal and binding effect as I had. And as to the Davies & Davis opinion, as I have heretofore stated, my counsel, in whom I place implicit confidence, stated it was wholly worthless and unsound. It passed from my mind and ceased to be considered by me as a matter of any importance whatever.

169 Q. You were one of the trustees of the Mo- 99
bile & Ohio Substitution Mortgage Bonds, were you not?

A. I was.

170 Q. Well, did you think it equitable toward the purchasers of these substitution bonds to furnish them with the opinion in favor of their validity as liens on the roads, and not the opinion against their validity as liens?

A. I never furnished any opinion whether Mr. 100
Tracy's or any body else's as trustee. I simply in my capacity as trustee signed the bonds. As to the publication of the prospectus, I do not know who did that. It certainly was not brought before me as a trustee, however.

171 Q. Don't you know if the opinion of Davies & Davis was circulated among prospective purchasers of these substitution bonds that it would have

101 presented some obstacles, whether serious or not, to the proposed sale of these bonds?

A. I think if there was any proof wanted of that fact. I call your attention now to the market price of the bonds, which, notwishstanding the Davies and Davis opinion and Mr. O'Conor's, opinion these bonds are selling on the New York Stock Exchange to-day at 102½ to 103. In my opinion this shows that the public does not attach any importance to any opinion which declares these Tennessee State Bonds
102 liens upon the roads.

172 Q. Then you think these Tennessee bondholders took the risk in their own hands under the notices which were incorporated in the bonds and the reference to the public acts of Tennessee?

A. I don't know where the risk comes in; according to my view there was none, what views they may have taken I can't say.

173 Q. In purchasing Tennessee bonds you bought them at the prices you have named with all the
103 overdue and unpaid coupons attached?

A. They were sold in that way.

174 Q. Those coupons were overdue and the companies used them for the payment of overdue interest?

A. Yes, sir, they were so used.

175 Q. If the railroad companies of Tennessee had promptly paid their interest, would not that have prevented a great depression in Tennessee State bonds?

104 A. That I can't say. The retiring act of 1869 was the most judicious act ever passed on behalf of the State of Tennessee.

176 Q. Were not the discounts at which the bonds were selling one of the inducements for the execution of these acts?

A. It certainly did afford an inducement, for this reason: at that time (the date of the passage of

these acts), there was hardly a railroad company in 105
the State that could raise money on its own bonds. This act came to their relief in regard to the sinking fund payments, and gave them the means or facilities with which to raise money to meet their engagements. A further inducement was to get the companies out of the hands of the State and to separate the raiload system of the State of Tennessee entirely from the State ; first, because I believed the roads would be worth more if freed from interference of the State officers and directors : and 106
secondly, thereby the State debt would be so reduced that it would enable the State to resume the payment of interest, and take her place as one of the great States of the American Union, which I thought would enhance the value of my property in the State fifty per cent., and I still think so, that was the moving cause in this operation. It has been worth millions of dollars to the State of Tennessee and her bondholders by reducing the obligations of the State in a greater degree than could 107
have been done otherwise.

Furthermore, I may be permitted to say that this legislation was in entire harmony with the wish of every debt-paying man at the time, or nearly so. I never saw but one man who was honestly in favor of paying the debt of the State that opposed it, and that was Hon. Henry Cooper, and he afterwards expressed himself delighted with the result that had been accomplished in the reduction of the State debt, and gave as his reason for then opposing it that he was afraid the railroads would not retire their debts under it, but would use it for speculating in State bonds. 108

177 Q. Do you not know that the judiciary committee of one of the Tennessee Houses at the session of 1869, when the act was under consideration, reported a bill in lieu of the bill pending for that

purpose, in which they required the railroad companies to pay the State the identical bonds as constituting liens upon the roads to which they were issued.

A. I do not. If there was any such report I never read it.

178 Q. Don't you know that even on the very last day when that substitution measure was under consideration before one of the Houses of that General Assembly a resolution was offered for the insertion of a proviso in that law in distinct terms saving the liens of the bondholders on the roads?

A. I don't think I ever saw it. I do not read legislative proceedings generally and never have.

179 Q. You were cognizant that the Legislature 1869-70 made investigation in reference to the frauds of the roads?

A. I never saw any report to that effect.

180 Q. Had you heard of that investigation?

A. I don't think I heard of such an investigation.

181 Q. Were not many of the bonds which you purchased, issues which were the subject of that investigation?

A. Not that I know of; but in a general way there was a repudiating party which wanted every bond investigated.

182 Q. These legislative investigations and proceedings were directed principally to the new bonds?

A. I think they were, so far as I know; also the last investigation took in the old bonds.

183 Q. I do not refer to that. I only ask you about the proceedings of 1869-70?

A. I don't know as to those.

184 Q. Those purchases were largely delivered back to the State?

A. The new bonds were largely paid back to the State. Let me here call your attention to the fact

that all these investigations, if they ever did come 113
to my mind, would make very little impression on me, for the reason that after the Democratic party had obtained possession of the government, and had a constitutional convention, and two or three legislatures, as was the case, and took no action towards making any preference between new and old bonds, or towards repudiating one bond and sustaining another, with the single exception of those issued to the Mineral Home Railroad, I was more and more convinced that no discrimination be- 114
tween the different classes of bonds would ever be made; and in confirmation of this the proposition of Gov. Marks to throw this bond and that over, as recommended in his message, and resume payment on a few, did not receive one single vote in the Legislature, as I remember, if it was voted on, and I think it was.

185. Q. Will you testify that none of these railroad companies, to which you refer as being connected with at that time, used any means whatever, or that 115
none of their officials used any means whatsoever, through publications or in any other mode, to depress the price of Tennessee bonds?

A. I will not testify to their action in any way, for I was not advised of all their actions; the records will inform you more accurately than I can.

186 Q. Don't you know that it was testified before a committee of the Tennessee Legislature this year that a sum of money was paid to a newspaper in the State of Tennessee and a receipt pro- 116
duced therefor, for the purpose of reducing or "bearing" State bonds, and enabling the roads to buy them at low figures?

(Objected to as incompetent.)

A. No such testimony was given before that committee in my presence.

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(Objected to as incompetent.)

A. No such testimony was given before that committee in my presence.

117 187 Q. Mr. Calloway, to whom you referred, was president of the company in 1872?

A. President of what company?

188 Q. The East Tennessee and Georgia Railroad?

A. Mr. Calloway was not president in 1872 of the East Tennessee and Georgia Railroad; I was president at that time.

189 Q. Did not a director of the Memphis and Charleston Railroad, at one of the meetings held before the delivery of the bonds to the State by that
118 company, oppose making arrangements at that time for the purchase of the State bonds on the ground that the tendency in the State of Tennessee to repudiate the debt would be to lower the price of bonds, and enable them to buy at 30 or thereabouts?

A. Not that I know of; not since my connection with the roads, as far as I know or remember.

190 Q. Was not an effort made by the railroad companies, or some of them, to oppose or defeat the passage of the funding act of 1873, on the
119 ground that the passage of that act would enhance the price of bonds, and make it more difficult for the companies to purchase them?

A. Not that I know of or remember.

191 Q. Did you not expect when you negotiated the sale of some of those substitution bonds, that they would be sold to a great extent in Europe?

A. I might say that I hoped a market would be made for them there; as to what grounds I had for that expectation I don't call to mind just now.

120 192 Q. You stated that these substitution bonds contained a certificate in reference to their being liens; why did you not print the act of 11th February, 1852, under which the lien originated or extracts from it, with the same facility with which you printed an alleged transfer of that lien?

A. In what respect do you mean to say that we did print an alleged transfer of that lien?

193 Q. I am now asking why you did not print 121
the act of 1852, or any extracts from it?

A. The act of 1852 was not pertinent to the subject; I did not conceive that it had anything whatever to do with it; this transfer—this transfer of the lien was the authority under which the transaction took place, and therefore was deemed to be pertinent, and accordingly printed.

194 Q. You have had large experience in railroads, and in negotiating railroad securities; don't you know that it is customary to print and circu- 122
late, or at least offer facilities to intending purchasers, to get copies of the mortgage securing the bonds?

A. It usually is so. In this case I think the mortgages securing the bonds were printed or circulated in that way.

195 Q. Do you mean the act of 1852?

A. No, because it had no connection whatever.

196 Q. The mortgages made February, 1869 or '70, 123
were they printed?

A. They were to some extent.

197 Q, Did they refer to the laws?

A. I think so; the bonds will show.

198 Q. Then I understand you that you considered that these new bonds were secured under the law of 1852?

A. I don't say so.

199 Q. Where did the lien get its origin?

A. I refer you to the laws for that.

200 Q. Well, don't you know that if you had 124
printed on the face of substitution bonds the language of the act of February 11th, 1852, "that so soon as the bonds of the State shall have been issued for the first section of the road as aforesaid they shall constitute a lien upon said section so prepared as aforesaid," and the balance of that section, it would at least have put the prospective purchas-

125 ers of the new bonds upon inquiry and examination as to whether the State bonds were a lien upon the properties or not?

A. What would be the effect of a garbled extract from that act, such as you have read, I am unable to say.

201 Q. Suppose you had printed the whole act?

A. I do believe that if the whole act had been printed, it would be generally construed as giving the bondholders no more connection with the rail-
126 road companies than the Emperor of China; I believe there is no more privity between the bondholder and the railroad company than with the Chinese Emperor.

202 Q. I ask you, if that act had been printed, whether it would not have put the bondholder on his guard to make some inquiry as to whether the Tennessee State bonds had a security on those roads?

A. He would have been able to judge for himself,
127 but if he construed the act as I did, he would come to the conclusion it didn't amount to anything; the act of February 11, 1852, does not provide for the identification of any bonds; he could not have told to what road it was issued.

203 Q. Suppose you had printed on the bond or circulated for the benefit of the purchasers of these new securities the message of Gov. W. G. Brownlow, of the State of Tennessee, or extracts from it, in which he declares the State of Tennessee holds this
128 lien in trust for the benefit of the State bondholders?

(Objected to as immaterial and irrelevant, and a mere supposition without any proof.)

A. I don't think I have ever seen it, and the only way I heard of it was when it was brought into the

discussion of the Mobile & Ohio case at Washing- 129
ton, in May, 1878.

204 Q. Suppose you had been the person to whom these bonds were offered, and the vendor had concealed from you the existence of an opinion given by the ex-Chief Justice of the State where the bonds were being offered for sale, would you have considered that equitable conduct on his part?

(Objected to as immaterial and irrelevant.)

A. In reply to that I say, if he had estimated the 130
opinion as being worth as little as I did, when I had it examined by my learned counsel, in whose judgment I have perfect confidence, I should have considered that no obligation rested upon the vendor of those bonds to give it currency; I further say I never concealed the Davies & Davis opinion from anyone whomsoever in my life.

205 Q. Were not a large amount of bonds of the State issued and being issued at the time or shortly before the passage of this act of 1869? 131

A. The records of the State will show very much better than I can, but I think not.

206 Q. Was not the issue of those large amounts of bonds authorized under the legislation of 1866 and 1867, and other acts passed since the war, the occasion of depreciating Tennessee bonds?

A. I must refer you to the State records as to the issuance of bonds; I never had any connection with the issuance of Tennessee bonds, and whether it 132
occasioned a depreciation in Tennessee bonds you can judge by the sales as well as I can.

207 Q. Were not the companies recipients of these bonds?

A. Some of my companies?

208 Q. The companies we first referred to?

A. They all received bonds at the close of the war; it was almost absolutely necessary for them

133 to receive new bonds in order to prevent the State from losing the entire debt, as the railroads were in a dilapidated and worn-out condition, bridges and cross-ties being rotten, iron machinery worn out, captured and destroyed, leaving the roads without credit or abilty to earn money with which to make the necessary physical restoration, so as to enable them to earn money to pay the interest to the State or anybody else with.

209 Q. Then they received a large amount of
134 bonds from the State, and after they were sold the act of 1869 was passed to enable the companies to buy back those bonds at the discount then prevailing?

A. The records of the State will show the amounts and times.

210 Q. I am not asking what the records show; please answer the question?

A. I don't think that was the object at all; I have previously stated the purposes and objects of
135 the act as far as I understood them.

211 Q. That was the effect, was it not?

A. You can judge of the effect. The State of Tennessee was broken down and crippled, and so was everybody else; Georgia bonds and other State bonds were pretty much the same way; Georgia six per cent. bonds were then selling about the same price as Tennessee six per cent. bonds.

212 Q. You know Mr. Mabry?

A. I know J. M. Mabry.

136 213 Q. During his visits to New York City in 1867, 1868 and 1869, or any one of them, was he not frequently in consultation with you?

A. Not very frequently, as he never did his general business with us.

214 Q. Sometimes he did?

A. Very rarely, indeed.

215 Q. Outside of your purchases for the railroad

companies, were you not a speculator in Tennessee 137
bonds?

A. That is a very singular question. I bought and sold a great many things on the market; I dealt in Tennessee bonds; I had a great many customers in them.

216 Q. Were you ever short of them?

A. That question is too personal; I don't propose to answer it.

217 Q. Was it not to your interest during the purchase of these bonds on account of the railroads 138
that the prices should be kept low?

A. As I now remember, I had very little interest in Tennessee bonds after the railroads commenced to buy. The efforts of my house were generally directed to fulfilling their engagements as bankers to the best of their ability.

218 Q. Who had charge of the legislative business of the East Tennessee, Virginia and Georgia R. R. Co. during the years 1868–69 and '70?

139

(Objected to.)

219 Q. Was not C. M. McGhee frequently in the city of Nashville during the period of 1869-70?

A. I was not there myself that I remember of, and I didn't see him there to the best of my recollection.

220 Q. Why will you not answer who had charge of the legislative business of these roads?

(Objected to as immaterial and irrelevant, 140
and because there has been no evidence that anybody had charge of such business, the question assuming something which is wholly untrue.)

A. That is my answer.

220 Q. Did you take any measures to inform the

holders of Tennessee bonds of any proceedings, executive, legislative or judicial, of what transpired in the State of Tennessee?

A. In respect to what?

221 Q. In respect to the liens on railroads?

A. I did not. It had been practically considered for twenty-five years or thereabouts that the State was the entire and absolute owner of the lien, and held it without any kind of interest on behalf of the bondholders. I think the idea of its having been a lien on behalf of the holders of State bonds would have been ridiculed in any part of Tennessee. The practical construction given to it from its very first inception up to the time this suit was commenced never hinted that the lien belonged to anybody else but the State. The State had thus practically construed the law during all this time, and I so read the law, and the bondholders up to the commencement of this suit had acquiesced in this construction.

222 Q. At the time of the passage of the act for the sale of delinquent railroads in Tennessee was it not contemplated by these railroad companies or by some of their officers, or other parties on their behalf, that they would become purchasers of these delinquent railroads, or some of them, at the sale which was expected?

(Objected to.)

A. I do not know that any such thing was contemplated; of course I don't know what was in the minds of the Corporation, but as to that having been the object of the passage of the act, I do not for one moment believe.

223 Q. Was it expected that they would buy these railroads and use them as feeders to the main line?

A. Expected by whom? 145

224 Q. By railroad officials?

A. I don't know what the railroad officials expected. It was expected that the highest and best bidder would become the owner of the roads, so far as I know.

225 Q. Will you testify that there is no record or paper of The East Tennessee, Virginia and Georgia Railroad Company or it officers which purports or indicates any action in reference to the passage of the act for the sale of delinquent roads, or any pur- 146
chases or transactions consequent thereon?

A. I have never seen such paper; if any such exists I don't know of it; I cannot testify to a nonentity; if it is permissible, I wish to state that any road which the East Tennessee, Virginia and Georgia Railroad bought at the State sales can be bought for less than it cost. They bought one road for $23,000 and sacrificed it for less than half its cost, to avoid being compelled to keep it up and run it, as its earnings did not anything like pay the 147
expenses of operating and maintaining it, nor have the earnings of the other roads done so.

Adjourned to Sep. 16, 1879.
" " " 29, "
" " Oct. 8, "
" " " 10, "
" " " 11, "
" " " 13, "

148

OCT. 13, 1879.

Direct examination resumed by MR. ANDREWS:

226 Q. Through whom did the East Tennessee, Virginia and Georgia Railroad Company negotiate the sale of the new bonds?

A. The contract provides that the Fourth National Bank should sell the bonds either itself or through

149 agents, for which it was to have 2½ per cent. commission. The account of sales of bonds shows that they sold, under that contract, 1,393 bonds of $1,000 each, on which a commission of $34,824 was paid.

227 Q. Who were the agents or brokers who sold the bonds for the bank?

A. I think that R. T. Wilson & Co. sold most, if not all of them, and in cases where they sold the bank gave them one-half of the commission paid it. This applies to the 1,393 bonds sold as above stated.

150 The accounts of sales show sales of $3,087,000 of the bonds. No commission appears to have been charged on the excess of sales over the 1,393 bonds sold by the bank. Probably I was chosen President of the road and made no charge for sale after that time. These three millions and eighty-seven thousand dollars netted eighty-three $\frac{59}{100}$ cents on the dollar to the road.

228 Q. In what places did your firm of R. T. Wilson & Co. make the sales of the new bonds?

151 A. Mainly, if not entirely, in New York.

229 Q. Has not your firm paid the interest on the bonds?

A. They have not. The interest has been paid by the Gallatin National Bank as agent of the East Tennessee, Virginia and Georgia Railroad.

230 Q. Will you give the names of the persons who purchased these new bonds from your firm?

A. Adrian Iselin & Co., mainly, if not entirely.

231 Q. Where did Adrian Iselin & Co. sell those

152 bonds?

A. I must refer you to them. Really I do not know where they sold them all.

232 Q. Will you state the names of some of the holders of those bonds?

A. I do not know who the present holder are.

233 Q. How much did A. Iselin & Co. pay for those bonds?

A. The accounts I have presented will show the exact price paid by A. Iselin & Co., and other parties, if there were other parties. 153

234 Q. Did not A. Iselin & Co. sell those bonds to a large extent in the city of Geneva, through the firm of Lombard, Odier & Co., and in other places in Switzerland.

A. I must refer you to them for that information.

235 Q. Will you produce the contracts between R. T. Wilson & Co. and A. Iselin & Co., in reference to the sale of those bonds? 154

A. I do not believe I have any written contract of it; I probably have copies of some letters for a portion of it.

236 Q. Please produce them at the adjourned examination.

237 Q. Will you produce the accounts on the books of R. T. Wilson & Co., with the firm of A. Iselin & Co., during the years 1869–70, '71 and '72, in relation to transactions in Tennessee State bonds and in the new bonds of the East Tennessee, Virginia & Georgia R. R. Co., or during any part of that time? 155

(Respondent's counsel objects to this question as incompetent and illegal, because it relates to and embraces matters wholly private, if they exist at all, between R. T. Wilson & Co. and A. Iselin & Co., and having no bearing upon the issues of this case.)

A. As the question has been explained by the complainant's counsel, I will confer with my counsel, and if advised that it is material to the matter at issue, I will produce the accounts so far as they relate to the retirement of the debt of the East Tennessee, Virginia & Georgia R. R. Co., to the State, and the sale of its bonds issued in lieu thereof. 156

238 Q. Did not any paper pass from A. Iselin &

157 Co. to you or your firm, showing at what price A. Iselin & Co., or their agents, sold the new bonds?

A. No such paper has passed that I now call to mind, as I don't remember it, and I don't think there has.

239 Q. Have you not stated that there was a profit made on the sale of the new bonds, over and above the amount you stated as having been received by the company?

158 (Respondent's counsel object, because it neither gives the time, place or person to whom the statement is alleged to have been made, and because the question is without relevancy or competency in its present indefinite shape.

A. In reply to that. I don't know whether I have or not, in the case of East Tennessee, Virginia & Georgia R. R.

240 Q. Will you produce a list as far as you can
159 obtain it, of the holders of these new bonds, as well on the East Tennessee, Virginia & Georgia R. R., as on the Memphis & Charleston, and the Nashville, Chattanooga & St. Louis?

A. I don't know who holds them except myself; I hold some of the Mephis & Charleston; no others.

Adjourned to Oct. 14th, 1879, at 11 A. M.

160

NEW YORK, Oct. 14, 1879.

Direct examination resumed by MR. ANDREWS:

Complainant's counsel offers in evidence "Report of Committee appointed to investigate the State Debt—Nashville, Tenn.," with testimony annexed to same, 1879, including

that of R. T. Wilson as an admission and declaration. 161

Respondent's counsel objects to the same as incompetent, illegal and hearsay.

It is agreed that this report and testimony may be produced in Court subject to the objection of respondents without attaching this report and testimony to the deposition of this witness.

162

The witness, further answering the direct interrogatories, says:

Upon further consideration respecting the inquiries contained in interrogatories 13, 14, 15, I say that I have made careful examinations of the memorandums of purchases of the R. R. stock in my possession, and find that these show that I bought from the close of the war up to 1872 the sum of about $292,000 of the par value of the stock of 163 the East Tennessee & Georgia and of the Consolidated Company at an average cost of 37.$\frac{65}{100}$ on the dollar.

In further answer to interrogatory No. 73 I herewith file a copy of the opinion of Charles Tracy, which was referred to as being published with the prospectus of the Mobile & Ohio bonds in my answer to said interrogatory. Marked Complainant's Exhibit No. 1. W. H. D. L., Spl. Exr.

In correction of my answer to the 76th interrogato- 164 ry I now say that I first saw the opinion of Davies & Davis in the latter part of May, 1870, but I don't remember to have read it then or since then.

In further answer to direct interrogatories Nos. 124, 169, 170, 171, 172, I herewith submit and file a copy of the contract with the 4th National Bank for the sale of the substitution bonds of the East

165 Tennessee, Va. & Ga. R. R. Co., Marked Complt's Exhibit No. 2. W. H. D. L., Spl. Exr.

I also file herewith copy of the contracts between R. T. Wilson & Co. and the East Tennessee, Va. & Ga. R. R. Co., under which the bonds of the State of Tennessee were sold to the East Tenn., Va. & Ga. R. R. Co. with which to retire its debt to the State; and also statement or extract from the books of R. T. Wilson & Co. of the account as rendered to the road, embracing the entries made on their
166 books of said transactions. Marked Complt's Exhibit No. 3, W. H. D. L., Spl. Exr.; and Complt's Exhibit No. 4, W. H. D. L., Spl. Exr.

In further answer to direct interrogatories 137, 8 and 9, as to a member of my firm applying to Calvin Stevens, father of complainant, to borrow Tennessee bonds, on enquiring I am informed by Mr. C. H. Bosher, my partner, that he did so apply.

In further answer to direct interrogatory 156 I think I saw the Davies & Davis opinion in the latter
167 part of May, 1870, being about one month after the East Tennessee, Virginia and Georgia R. R. Co. had bought most of their bonds with which to pay their debt to the State.

In reply to direct interrogatory No. I herewith submit and file the following correspondence between R. T. Wilson & Co., and Messrs. A. Iselin & Co., which exhibit all the contracts made for the sale of the East Tennessee, Virginia and Georgia substitution bonds by the former to the latter, viz.:
168 Copy of letters from R. T. W. & Co. to A. Iselin & Co., dated 13th May, &c.

(Marked complainants' Exhibit No. 5, W. H. D. L., Special Ex'r.)

In reply to direct interrogatory No. requesting the production of the accounts as shown by R. T. Wilson & Co's. books with Messrs. A. Iselin & Co.,

I have carefully examined the books of R. T. Wil- 169
son & Co., and they do not contain a single account with A. Iselin & Co., during the years named, and I herewith file copy of the account of A. Iselin & Co. rendered, showing the purchase of the only interest I ever had in any of the substitution bonds of the East Tennessee and Virginia R. R. Co.

(Marked Complainants' Exhibit No. 6, W. H. D. L. Special Ex'r.)

That interest occurred in this way—at the outset 170
of the sale of the East Tennessee, Virginia and Georgia substitution bonds, in order to give them a start, I agreed in conjunction with two other parties to buy $125,000 of these substitution bonds. This was in May, 1870, and before I knew Mr. Iselin, as my acquaintance with him began in the early part of that month as I now recollect. The arrangement to sell to Mr. Iselin was afterwards entered upon, and to show my faith in the bonds, I still proposed to take an interest in the purchase of the 171
$125,000 with an option of $375,000 of the $500,000, which I had been in treaty about with the other parties. They fell out, and I told the company that I would take in my name the $500,000 interest, but that it must take two-fifths of these $500,000 for its own account.

The road and myself did take this interest and the bonds were offered in Europe, but the Franco-German war intervened and prevented the sale of most of them and the transaction was incomplete, and in 172
August, 1870 A. Iselin & Co. bought out this interest, paying $7,500 for it, $4,500 of which was placed to the credit of the road and $3,000 to my credit. This is all the interest I ever had in these bonds directly or indirectly, and this interest came about in the manner I have stated, nor did I have any interest in the profits of the sales made by Messrs. A.

173 Iselin & Co., or anybody else, of these substitution bonds except as above stated.

Cross-examination by MR. HUMES:

241 x Q. Mr. Wilson, you have stated in your examination in chief the feelings of the railroad men and their action respecting the origin of the Act of 1869-70. What was the feeling of the leading men of the State in regard to it as a measure of
174 State relief, so far as you know?

A. Well, in reply to that question, it is proper for me to state that at the interview between Branner, Calloway, Judge Nelson, and myself, previously referred to, the question of how it would be viewed from the side of the State was thought of, and it was agreed that either Judge Nelson or Mr. Calloway should ascertain the feeling of prominent citizens as early as could conveniently be done, and before making any move toward having it enacted
175 into a law, whereupon some of them conversed with a few prominent citizens about Knoxville, (among whom was Ex-Gov. Brownlow, who, I believe, had taken or was about to take his seat as United States Senator), upon the subject of the State's interest in the matter.

I was informed that he seized upon the idea with great interest, and said that it was the very thing that the State needed. That it would afford a remedy for the embarrassed condition of the State
176 finances, and enable it to get in much more rapidly than could otherwise be done its outstanding indebtedness, which in the end, he said, would work out the salvation of the State's credit, and if it could be successfully carried out, would so reduce the debt as to enable the State to meet the interest without serious embarrassment to her citizens. This much I learned while I remained at Knoxville,

say two or three days after this interview respecting the Act. After which time as I now remember I returned to New York, and received frequent letters from Mr. Calloway and others of the great popularity of the measure as viewed from the State's side of the question. All agreed, so far as I heard, that any plan which would result in so largely reducing the outstanding indebtedness of the State must inevitably work a great benefit to it. And as I have previously stated, I did not know of but one man in the State who was honestly in favor of paying the debt, who did not advocate the measure in the most hearty manner, solely as a matter of public interest to the State, to say nothing of the railroad interest in it, and that one man afterwards upon seeing the great reduction of the debt that had been effected by it, said that he most heartily approved of it. 177 178

242 x Q. In interrogatory in chief No. 45, when counsel for complainants asked you as to report of the Comptroller showing that R. T. Wilson & Company were fiscal agents of the State of Tennessee, did he produce such report, and did you not request him to do so, and has he not wholly failed to do so during this examination? 179

A. I state I did request him, and he has failed to do so.

243 x Q. What sources or means of information did the holders of State bonds residing in Tennessee and New York have of these settlements of the railroads with the State while they were going on? 180

A. The matter was a subject of public discussion in the papers of Tennessee, and the large purchases of Tennessee bonds attracted public notice more or less through the financial columns of the papers of New York, which attributed the large transactions in them to purchases made for

181 railroad account, with which to retire their indebtedness to the State, and in addition to this the substitution bonds issued in lieu of the Tennessee State bonds were advertised in New York, for sale, as is shown by the following copies of advertisements, from which it will be seen that each advertisement gave notice that the substitution bonds had been issued in lieu of the debt to the State of Tennessee, and carrying its lien by assignment from the State. I present and file herewith copies of these adver-
182 tisements and names of the papers in which they were published as Exhibits to my deposition.

(Marked Respondent's Exhibit No. 1.—W. H. D. L., Spl. Ex'r.)

244 x Q. Do you know of or did you ever hear of from the year 1865 to the bringing of these suits of any coupon holder of the bonds of Tennessee presenting them for payment to any railroad com-
183 pany to whom the bonds had been issued?

A. No, I never did; nor do I believe any coupon holder ever did make such a demand against any railroad company. I think if such a demand had had been made I certainly would have known of it, as I had direct relations with a great many roads and knew intimately the officers of almost every railroad to which bonds had been issued. If such a thing had ever transpired I would have been informed of it. But on the contrary, notwith-
184 standing the fact that the State of Tennessee was in default upon its interest from the outbreak of the war up to the date of the bringing of this suit, with a few exceptional times when it was paying, during all this time the bondholders by their repeated funding of their past due coupons into the new bonds of the State and by registering their bonds as straight bonds of the

State, time and again said by their acts that they looked to the State alone as their debtor, and never intimated any claim against a railroad. 185

245 x Q. Who were the Commissioners for the sale of delinquent roads referred to in interrogatory in chief No. 115, and what was their character and standing in Tennessee?

A. They were Ex-Judges Robert G. MacKinney and Archibald Wright of the Supreme Court of the State, and Francis B. Fogg, an eminent lawyer. And it may safely be said that for probity, legal learning, and spotless character no three men in any State enjoyed a more enviable reputation. They were all men of independent fortune, over sixty years of age, without any then or former connection with the railroads; being citizens whose patriotism and fidelity to the welfare of the State was not questioned by a single individual in it. While MacKinney and Wright were on the Supreme Court for a great many years the decisions of the Court of which they were two out of the three commanded the respect of the legal mind of America. 186 187

The lawyers employed by them to conduct the business were the Hon. Edwin Ewing, Hon. Wm. F. Cooper and Wm. B. Reese; the two former of whom are universally acknowledged to be the two leading lawyers in the State. And Mr. Cooper was before the war and now is one of the Supreme Judges of the State.

246 x Q. In your answer to interrogatory in chief No. 141, you say that the father of the complainant was frequently in your office, and that you conversed with him about Tennessee bonds and railroads and other things. Did he know about these railroad settlements that were going on? 188

A. I do not certainly remember whether he did or not, but my impression is I told him as I uniformly did holders of Tennessee bonds who talked to me on the subject.

189 247 x Q. Please state the present price of East Tennessee, Va., and Ga. Railroad stock?

A. It is about 37½ cents on the dollar.

248 x Q. How many dividends have you received from the East Tennessee, Va. and Ga. Railroad since the war?

A. I think five or six dividends of 3 per cent. each.

249 x Q. You stated in your examination in chief that the opinion of Charles Tracy was published;
190 did that opinion touch upon the subject of the lien of the Tennessee bondholders?

A. It did not.

250 x Q. Will you produce that opinion?

A. I will; and I now herewith file a copy as an Exhibit to my deposition.

(Opinion already filed as Complainants' Exhibit No. 1 hereto. W. H. D. L., Sp'l Ex'r.)

191 251 x Q. What other instance besides the one given in your answer to interrogatory 31 in chief do you know of where a railroad company made a payment or payments on their debts to the State in any bonds of the State. Please give any additional reasons which you may have going to show that the payment of the railroad debts to the State in any bonds of the State with or without the legislation of 1869 and 70, was in accordance with the custom and wish of the State?

192 A. Besides the Louisville & Nashville R.R. Co. so paying off its debt after the war, say in 1866 and before the Acts of 1869 and 1870 were passed. I have the example of the payment made by the East Tennessee and Ga. R. R. Company on the 4th of June, 1862, in which that company paid $100,000 of its in debtedness to the State in any bonds of the State. It is true that this payment pur-

ports to be made to the sinking fund, but 193
it is to be remembered that the sinking fund payments had been suspended the year previous by Statute, and there was no payment due to the sinking fund, as is fully shown by a previous receipt for nine thousand dollars, dated Nov. 2, 1861, which receipt together with other receipts for payments made by that company, I herewith file,

(Marked "Respt's' Exhibit, No 2." W. H. D. L., Spc'l Ex'r.)

194

I also herewith file a certified copy of the account of the East Tennessee and Georgia Railroad Company with the State,

(Marked "Resp't's Exhibit No. 3." W. H. D. L., Spc'l Ex'r.)

This shows that this payment and others were passed directly to the credit of the company on the books of the State when made. No man in, or out of the State, up to the time of the passage of the Acts of 1869 and 1870, so far as I ever heard of, for 195
one moment supposed that it was necessary to enact further legislation in order to get the privilege of paying the debts of the roads in any bonds of the State—that is, no railroad man ever supposed such a thing was necessary. They had had too many urgent demands made upon them for payments to the sinking fund, to admit of their believing that it was necessary to procure legislation in order to get the privilege of paying their debts in the identical thing in which the State was constantly 196
pressing them to pay without such legislation; hence, as I have stated in my direct answer, the sole and whole object of the legislation of 1869 and 1870 was to enable the roads to substitute their own bonds so as to carry with them the lien of the State, to raise money with which to buy Tennessee bonds to pay their debts to the State, and thus meet the

197 pressing demands of the State, which were shortly to be made upon the roads in the way of their dues to the Sinking Fund. These Sinking Fund payments as stated in answer to direct interrogatory No. ——were to be resumed in 1870.

252 x Q. You say in your answer to Direct Interrogatory No. 95, that you did not know that the Tennessee and Pacific bonds that you bought or received in payment for bonds loaned were issued to the Tennessee and Pacific Road at the time
198 you bought them, and that you did not know to what roads bonds were issued when you bought them, and that you had no means of knowing this at the time you purchased bonds. Are you familiar with the custom of buying and selling Tennessee bonds on the New York Stock Exchange, and, if so, please state the manner of buying and selling bonds there, and also please state whether the purchaser of bonds has any means of knowing to what road, or
199 whether to any road at all, or for what purpose, the bonds that he is buying were issued at the time he buys them?

A. I am perfectly familiar with the rules and customs of buying and selling Tennessee bonds at the New York Stock Exchange. The bonds are classified into "Old Tenn. 6s," "New Tenn. 6s," and "New Series Tenn. 6s." The old bonds embraced all 6% bonds issued before the war to railroads, either as loans, or in payment for stock subscrip-
200 tions, those issued to turnpikes, to the agricultural bureau, to build the capital with, and for stock in banks, and for any purpose whatsoever—of these there were outstanding at the close of the war about $15,000,000 in round numbers issued for various purposes.

The New Tenn. Bonds embraced the interest funded under the act of 1866, and also the new

bonds loaned to railroads and turnpikes, and also 201
some that were issued and sold to raise money for State purposes.

The New Series embraced bonds funded under subsequent funding acts to the act of 1866.

Now when a purchase is made in the regular way for "old," "new," or "new series," as the case may be, it is for delivery the following day, or it may be for cash, which means the same day; or it may be seller sixty, which means that the seller must deliver on or be- 202
fore sixty days from date of sale. In any case a delivery of any bonds of the class which is sold fulfils the obligation, and is a good delivery. The buyer cannot tell until his bonds are delivered to him at his office either the next day, or, if sold for cash, the same day, or, if sold seller sixty, sixty days hence, either the number of his bond, or for what purpose it was issued, nor, if issued to a railroad, to what railroad. No man buying a bond in the New York Stock Exchange ever did know to what 203
road it was issued when he bought it, or whether to any road at all, nor could he do so under the rules of the Stock Exchange.

253 x Q. Has there been any difference at any time between the prices of old Tenn. 6% bonds, issued to railroads as loans, and those issued by the State for purely State purposes? Please answer the same question as to new bonds?

A. There never has been any difference in the price of either old or new 6% bonds between those 204
issued to railroads and those issued for State purposes.

About the time the parties were preparing themselves with bonds, or some of them, upon which to bring these suits, I heard that they were going round from office to office seeking to exchange the bonds they had for bonds on solvent roads, and were offer-

205 ing as high as one cent on the dollar difference between bonds issued to no roads or to insolvent roads and those issued to solvent roads, and this is the only exception, and even it is not conducted through purchases or exchanges made at the Stock Exchange, which rules the prices of bonds of all kinds.

254 x Q. Did you or your firm ever make any loans on Pacific and Tennessee bonds inquired about in direct interrogatories 131, 132, 133, 134, to those
206 holding them?

A. Neither I nor my firm ever made any loan on Pacific and Tennessee bonds, either directly or indirectly, to those holding them.

255 x Q. Direct interrogatories 173 and 174 asks why you failed to afford Tennessee bond holders the same opportunity of judging whether the Tennessee State bonds were liens upon the railroads as you had yourself. Did you ever refuse or deny to any Tennessee State bondholder equal means of know-
207 ing his rights which you had yourself?

A. I never refused or kept back from them (the Tennessee bondholders) any information upon this subject, but on the contrary I told one and all, when asked (and I was asked by a great many of them respecting the probable value of these bonds), what was being done, in a general way, by the roads in retiring their debts to the State, and frequently alluded to the laws under which these settlements were being made, and, so far as I now recollect, the
208 bondholders, without a single exception, approved of the roads paying their debts to the State, and joined with me in the opinion that this was the best and surest way of restoring the credit of the State. Besides this the purchases of bonds by the roads and the payment of their indebtedness to the State, and the sale of the New Railroad substitution bonds were matters of public notoriety both in New York and in Tennessee.

256 x Q. Have you copies of the receipts of the 209
payments by the East Tennessee, Virginia and Georgia Railroad Company to the State of its debt, if you file them?

A. I have and I herewith produce and file them.

(Receipts produced, and marked Recpts. Exhibits No. 4, W. H. D. L., Spl. Ex'r.)

Adjourned to Oct. 23d.

210

Oct. 23d, 1879.

R. T. WILSON recalled and examined by Mr. ANDREWS:

Re-direct examination:

257 Q. Have you been able to find the statement or letter referred to in your previous examination?

A. I have been unable to find anything that the question referred to, as I understood it.

258 Q. Is paper now shown to you a copy of the 211
document signed by you and which paper is now offered in evidence and marked "Complainants Exhibit, No. 7, W. H. D. L., Spc'l Exr.

A. With the exception of some entries on the back on the 10th page and some minor errors of copy, I think it is. This paper, which purports to be a copy of a letter, and addressed to John T. Terry, was hastily drawn by me and read to Mr. Terry, but as I now remember never delivered to him. In explanation of some statements it con- 212
tains, I here state that I had nothing more to do with the act of February 25th, 1869, nor with its preparation or passage, nor with the act of 20th January, 1870, nor with the acts for sale of Insolvent Roads than I have previously stated in this deposition. The statement in this letter as to the preparation of the act of February 25th, 1869, and

213 that I induced its passage, simply meant to say that at the conference with Judge Nelson and others. previously mentioned in this deposition, I drew the memorandum of the main features of the act, and left it with Judge Neilson, telling him and the railroad men with whom I was in conference, that I thought if a law of that kind were passed, it would enable the railroad companies to retire at least a portion of their indebtedness to the State. I did not mean to say in this letter that I had anything
214 more to do with the passage of the act, than I have previously stated in this deposition, nor with the passage of the act of 20th January, 1870. Respecting the statement contained in this letter as to the legislation for the sale of defaulting roads, I only meant to say that I had, in common with others, suggested and heartily approved the State's selling its interests in the defaulting roads. This suggestion, however, as I now remember, was not original with me, nor was it made at the conference with Judge
215 Nelson and others, previously referred to in this deposition ; nor did I ever, so far as I now remember, solicit the passage of the bill in the legislature or any part thereof for the sale of the defaulting roads ; although as a State measure and as an owner of a large property interest to be benefited, and subserved by anything that would promote the public welfare of the State, I earnestly favored these measures, sincerely believing that their adoption and carrying into effect
216 would save the State many millions of dollars, and from a most careful and intimate observation of the effects produced under this legislation, in the way of reducing the State indebtedness, I am more and more convinced of the soundness of my judgment in respect to that matter, believing that it has resulted in the saving to the State of several millions of dollars. I

wish to say further, in respect to the classifying of 217
myself as a railroad man in said letter, that I only meant to say that I was a director in one of the roads, and a large stockholder in it. I was not at that time an officer in a railroad company except as previously stated.

This letter was induced by an intimation coming from Mr. Terry to the effect that if the railroad companies did not raise a fund or contribute towards a fund to procure a settlement of the State debt with the State, that 218
the bondholders would probably sue the railroads. On page 5 and line 13 it should read "and the State its debt," instead of "their." On the 18th line of the 5th page read "defeat" instead of "deferred." In explanation of the sentence commencing on the 3d line of the 7th page of said letter, in which I state that my associates and I retired about fifteen millions of the debts of the railroads, I did not mean my partners and myself; but I meant to say that my firm and such houses as 219
Drexel, Winthrop & Co., now Drexel, Morgan & Co., Adrian Iselin & Co., The New York Guaranty & Indemnity Co., Duncan, Sherman & Co., Roosevelt & Sons, and other prominent houses in this city who co-operated with me, had retired about that amount of indebtedness of the railroads to the State, which embraces the payment of debts under the retirement act, and the payment made by the parties purchasing the sold roads, through financial arrangements made by myself and my asso- 220
ciates. On the 15th line on page 7 the word "for" should read "or." On the 17th line of page 7 read "usually" for "usual."

Cross examination by MR. HUMES:

259 x Q. In your answer in chief you have said the State saved millions by the sale of insolvent roads,

221 and by effecting the settlements with solvent roads by and under the acts of 1869 and 1870. Now, please state the facts as to the sold roads, what they sold for, and what they are now worth; and what was the operation and effect as to the solvent roads, and how the State saved money through the retiring of the debts due to it from the solvent roads?

A. The Nashville & North Western R. R. was sold for $2,400,000, being a sum very much more
222 than it was worth, as will appear from the following statement of its earnings and expenses:

That road, having defaulted on its interest, fell into the hands of the State under receivership, and was leased to the Nashville & Chattanooga R. R. Co., which operated it for eighteen months previous to the 30th of June, 1871. The report of the lessee shows that it earned during this period $606,605.21. And that during the same time there was expended upon it.....$983,684 44

223

Showing for that period a net loss of....$377,079 23

For the next ensuing twelve months it was operated by the Nashville & Chattanooga R. R. Co. as purchaser. The earnings for the fiscal year ending June 30, 1872, were.....$613,679 13
Operating and renewal expenses..... 984,526 38

224 Net loss.....$370,847 25

For the next fiscal year, ending June 30th, 1873, the earnings were..... .... 642,681 36
Operating and renewal expenses..... 559,150 33

Net income.....$83,531 03

For the following fiscal years, the expenses of this

division of the Nashville, Chattanooga & St. Louis Railway are consolidated with the general expenses of the whole line. 225

The freight earnings, however, are kept separate, and the passenger earnings are assumed upon the same relative basis to the freight earnings, which they bore during the previous years when they were kept separately. Showing the following result:

Total income for the year ending June 30,				1874,	490,464 94
"	"	"	"	1875,	426,066 74
"	"	"	"	1876,	416,454 49
"	"	"	"	1877,	350,230 38

226

At the same relative rate of expenditure as was made in operating the road for the fiscal year ending June 30, 1873, this would show each of the succeeding years to pay a net loss, which was probably not the case, but it is certain that the net income of the road for these four years, was not sufficient to pay the interest upon one-half what it cost. 227

For the eighteen months that it was operated for account of the State, by the Nashville & Chattanooga R. R. Co., as receiver and lessee, the net loss was about $377,000.

For the first year after the purchase of the road, it was very nearly as large, and had it remained in the hands of the State, and not been sold out, it is almost certain that the State would have been brought in debt every year on account of operating expenses, and would ultimately have lost its entire debt upon the road. I am intimately acquainted with the road, having had a large interest in the Nashville, Chattanooga & St. Louis Railway, of which it formed a part, and have been a careful observer of its operations, from the day it was purchased up to the present time, and I most unhesitatingly state that I do not believe, from the best of my judgment, that it was worth one-half what the State sold it for. 228

292 Then, further, the Memphis and Charleston Railroad Company bought from the State, through Wicks & Donnigan, the McMinnville, Manchester and Southwestern Railroad, and the Winchester and Alabama Railroad, paying to the State for these roads $600,000 in Tennessee bonds, carrying coupon of January, 1871. It also paid to the stockholders of these companies, as part of the purchase money, in order to remove some complications, $350,000 in the stock of the Memphis and Charleston Railroad
302 Company, and expended in grading and farther extension of the Southwestern road $137,691.78 in cash.

After operating these roads for several years, during which time the net income did not amount to half enough to pay the interest on their cost, they were sold to the Nashville, Chattanooga and St. Louis Railway for $320,000 of the forty year six per cent. bonds of the latter Company; these bonds were sold at about 70c. on the dollar, being about
231 the same price which the Memphis and Charleston Railroad Company paid for the State bonds with which to make payment to the State. The accounts on the books of the Memphis and Charleston Railroad Company show a clear loss on this venture of $557,791.93, which is correct, and I believe that the Nashville, Chattanooga and St. Louis Railway, as purchaser, paid the full value for the roads bought from the State by the Memphis and Charleston Railroad Company, upon which this loss was made.

232 I will take next the Cincinnati, Cumberland Gap and Charleston road, which was purchased for $300,000 in Tennessee State bonds by C. M. McGhee and myself, as trustees for the East Tennessee, Virginia and Georgia Railroad Company, which has since been operated by that company in the most economical manner, and the income of which has failed to pay operating expenses, to say nothing of

interest on its cost, by from fifteen to eighteen thou- 233
sand dollars. Hence thus far this road has really been worth nothing to the purchasers, and had the State continued operating these roads through receiverships I give it as my deliberate conviction that it would have been brought in debt every year on account of their operating expenses, and long before this time the roads would have been so run down and worn out as to render them unsafe, and incapable of being operated at any net profit, and in the end the State would have lost most if not all 234
of the debt which it held upon them.

The East Tennessee, Virginia and Georgia Railroad Company bought the Rogersville and Jefferson Railroad for $23,000, and after keeping it for several years, and operating it at a loss, sold it for notes, on which it realized about six thousand five hundred dollars.

The Memphis, Clarksville & Louisville R. R., which was purchased by the Louisville and Nashville road, was in such a dilapidated condition as to 235
make it almost impossible to operate it except at a loss, but through the support given it by the Louisville & Nashville Railroad in the shape of means and business it has been restored, and perhaps is now as valuable, if not more valuable, than any of the sold roads; without this support, however, it would have entailed a much heavier loss upon the State than was the case.

And now, as to the saving to the State through the retirement of the debts under the Acts of 1869 236
and 1870.

What I meant to say was this, that there was scarcely a road in the State which would have been able to resume and maintain the payments to the sinking fund when it became payable in 1870, and that as a consequence of their failure to do so nearly every road would have gone into the hands of a

receiver and been sold out, or else run at a continuous loss to the State.

Take for instance the East Tennessee, Va. & Ga. Railroad; at the date it made its settlement with the State it owed the State $4,117,000, and the Government had a claim upon it for about $637,000, which latter was claimed to be a paramount lien to all others, and to obtain which the War Department had appointed a military receiver, who had only been temporarily restrained from taking possession through the intervention of the Circuit Court of the United States; the Government claim was settled under an act of Congress a year or two subsequent for about $200,000 mainly in ten and fifteen year bonds of the road, and the State debt was settled at a saving to the company of about $1,300,000, showing a total reduction of the indebtedness on which interest had to be paid of about . . . $1,700,000.

The road has since been run with the greatest economy, and the net earnings have only sufficed to pay the interest on the reduced indebtedness, and to pay six dividends of three per cent. on less than two millions of dollars, amounting in the aggregate to . . . . . $354,289.32.

While the four per cent. sinking fund on the $4,117,000 for the nine years now elapsed is $1,482,120,

And the six per cent. interest on the $1,300,000 saved in the retirement of the State debt amounts to . . . 702,000,

Being a total of . . . . $2,184,120.

These two amounts being in excess of the amount of dividend paid by the sum of . . . . $1,829,830.68.

Which amount it would have been utterly impossible for the road to pay; hence, in all probability,

it would have gone into the hands of a receiver and 241
been sold out.

From an intimate knowledge of the condition of the Memphis and Charleston Railroad Co., I can state truly that that road would have been sold out but for the forbearance on the part of the State granted to the management of that company in order to give it time to retire its debt, which it was finally enabled to do mainly through parties that were interested in the welfare of the company, and who supplied the money in order to save themselves, as 242
far as possible from the great loss that would have been entailed upon them by letting the road pass into the hands of the State.

At the time that the lien held by the State was purchased from the State by A. Iselin & Co., that road was liable to have passed into the hands of a receiver for default in the payment of sinking fund and interest, and had such been the case I do not believe the State would have realized two-thirds of its debt. 243

The Mobile & Ohio Railroad was also in default on account of the sinking fund and interest, and has since failed to meet its interest on the substitution bonds and has been reorganized at a heavy loss to the holders.

The Nashville and Decatur road was also in default, and would have been sold out had not it succeeded in procuring parties to retire its debt under the acts of 1869-70, and would under these circumstances have brought probably not two-thirds of the 244
debt due to the State.

And this is true of nearly every so-called solvent road that paid its debt to the State, except the Nashville and Chattanooga, and Louisville and Nashville roads; not a single road other than these would have been able to have made their annual interest and sinking fund payment, that I now know

245 of. Hence all would have gone into the hands of receivers and been sold out, or else run at a loss to the State. This fact, I think, was fully realized by a large number, if not all, the holders of Tennessee State bonds, who, so far as I know, without a single exception, urged that this policy of retiring the debts due the State from the railroads should be carried into effect.

In the case of the Memphis and Charleston rail-road, Mr. Peter Geddes repeatedly urged me as its
246 president, to retire, or procure some one to retire the debt due to the State from that Company, and on one occasion he came to my office and made inquiry as to how I was getting along in the matter of retiring the debt of that Company to the State. I told him that the Company was ready to retire its debt as early as it could possibly procure means with which to do so; that it had made arrangements with some parties to buy and carry some of the bonds, with a view of either retiring its debts
247 on its own account, or else getting some of the parties to buy the lien from the State, who could give the Company more favorable terms of payment than the State could; that under such an arrangement, about three hundred thousand dollars of Tennessee bonds had been procured, and that as he was a holder of a large amount of such bonds, both for himself and Mr. George Smith, that to secure the needed amount, I would buy his bonds. He declined to sell his bonds, but insisted that I should
248 go forward and retire the debt at once, giving as his reason for urging me to retire the debt, that until that was done, I and my party could never be efficient co-workers in the restoration of the State's credit. The debt of that Company was purchased from the State by A. Iselin or A. Iselin & Co., thereby retiring the debt to the State in accordance with the wishes of Mr. Peter Geddes, (as fully ex-

pressed to me and as particularly urged by him on 249
the occasion to which I allude), and of every other bond-holder, so far as I know and believe, without a single exception.

I give it as my deliberate judgment, having perfect familiarity with the condition of nearly every ralroad in the State, that the State of Tennessee is from four to six millions of dollars better off than it would have been if the Retiring Acts and the Acts for the sale of the roads had not been passed.

260 x Q. How long have you known Mr. Iselin, 250
and what were the circumstances under which you made his acquaintance?

A. In March or April, 1870, I made application to the New York Guaranty and Indemnity Company to supply the money with which to retire the debt of the East Tennessee, Virginia and Georgia Railroad Company to the State, and the President of that company convened a meeting of the board of directors, in order that I might submit the application and make a statement of the con- 251
dition of the roads, for the decision of the board.

Mr. Iselin was present at that meeting. It was in the early part of April, 1870, as I now remember. I saw him there for the first time in my life, so far as I know, but was not then presented to him.

The Guaranty and Indemnity Company declined to loan the money, whereupon it was procured from the Fourth National Bank.

Early in the succeeding month of May, Mr. 252
Odier, of firm of Lombard, Odier & Company of Geneva, Switzerland, arrived in America, and Mr. Iselin having heard my statement respecting the wish of our company to retire its debt to the State presented the subject to Mr. Odier, and asked an introduction to me through the President of the New York Guaranty and Indemnity Company,

245 of. Hence all would have gone into the hands of receivers and been sold out, or else run at a loss to the State. This fact, I think, was fully realized by a large number, if not all, the holders of Tennessee State bonds, who, so far as I know, without a single exception, urged that this policy of retiring the debts due the State from the railroads should be carried into effect.

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246 president, to retire, or procure some one to retire the debt due to the State from that Company, and on one occasion he came to my office and made inquiry as to how I was getting along in the matter of retiring the debt of that Company to the State. I told him that the Company was ready to retire its debt as early as it could possibly procure means with which to do so; that it had made arrangements with some parties to buy and carry some of the bonds, with a view of either retiring its debts
247 on its own account, or else getting some of the parties to buy the lien from the State, who could give the Company more favorable terms of payment than the State could; that under such an arrangement, about three hundred thousand dollars of Tennessee bonds had been procured, and that as he was a holder of a large amount of such bonds, both for himself and Mr. George Smith, that to secure the needed amount, I would buy his bonds. He declined to sell his bonds, but insisted that I should
248 go forward and retire the debt at once, giving as his reason for urging me to retire the debt, that until that was done, I and my party could never be efficient co-workers in the restoration of the State's credit. The debt of that Company was purchased from the State by A. Iselin or A. Iselin & Co., thereby retiring the debt to the State in accordance with the wishes of Mr. Peter Geddes, (as fully ex-

pressed to me and as particularly urged by him on 249
the occasion to which I allude), and of every other bond-holder, so far as I know and believe, without a single exception.

I give it as my deliberate judgment, having perfect familiarity with the condition of nearly every ralroad in the State, that the State of Tennessee is from four to six millions of dollars better off than it would have been if the Retiring Acts and the Acts for the sale of the roads had not been passed.

260 x Q. How long have you known Mr. Iselin, 250
and what were the circumstances under which you made his acquaintance?

A. In March or April, 1870, I made application to the New York Guaranty and Indemnity Company to supply the money with which to retire the debt of the East Tennessee, Virginia and Georgia Railroad Company to the State, and the President of that company convened a meeting of the board of directors, in order that I might submit the application and make a statement of the con- 251
dition of the roads, for the decision of the board.

Mr. Iselin was present at that meeting. It was in the early part of April, 1870, as I now remember. I saw him there for the first time in my life, so far as I know, but was not then presented to him.

The Guaranty and Indemnity Company declined to loan the money, whereupon it was procured from the Fourth National Bank.

Early in the succeeding month of May, Mr. 252
Odier, of firm of Lombard, Odier & Company of Geneva, Switzerland, arrived in America, and Mr. Iselin having heard my statement respecting the wish of our company to retire its debt to the State presented the subject to Mr. Odier, and asked an introduction to me through the President of the New York Guaranty and Indemnity Company,

253 which was granted, and about the 12th or 15th of May, I became for the first time personally acquainted with Mr. Iselin, when we took up the subject of negotiating for the bonds, which it was proposed to issue for the purpose of raising money to retire the debt to the State. And out of this transaction grew my acquaintance and subsequent operations with Mr. Iselin.

I herewith present the account of the Mobile & Ohio Railroad called for in the examination in
254 chief.

(Marked Complainant's Exhibit No. 8.—W. H. D. L., Spl. Ex'r.)

(Counsel for defendants object to the foregoing answer and Exhibit as incompetent and irrelevant in these cases.)

Adjourned to October 24th, 1879, at 1 P. M.

255 NEW YORK, October 24th, 1879, 1 P. M.

Present—Counsel as before.

R. T. WILSON resumes:

261 x Q. In your letter to Mr. Terry you say: "That so long as the railroads were indebted to the State the temptation to them to so influence legislation, as to cause a default in the payment of coupons in order to buy them up at a discount and
256 pay them over to the State." Did now mean to say that the railroad men had influenced legislation in this way?

A. I did not. I merely meant to say, that it offered a temptation to do so.

Nov. 12th, 1879.

And further deponent saith not.

R. T. WILSON,

Subscribed and sworn to before me, this 12th day of November, A. D. 1879. 257

WILLIAM H. DE LANCEY,
[L. S.] *Notary Public*,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

258

Certificate.

UNITED STATES OF AMERICA,
Southern District of New York,
State and County of New York, } ss.:

I, WILLIAM H. DELANCEY, a Notary Public, in and for the State and County aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the Circuit Courts of the United States, do hereby certify that the reason for taking the foregoing de- 259
position is, and the fact is that the testimony of the said witness is material and necessary for the complainant in the cause in the caption of said deposition named, and that the said witness lives, and did live at the time of taking said deposition in the City and County of New York, the same being at a greater distance than one hundred miles from the City of Memphis, where the Court, at which it is expected the said cause will be tried, was appointed to be held, to-wit: more than five hundred miles 260
therefrom.

I further certify that the said witness was examined and cross-examined by the counsel for the respective parties to the cause named in the caption hereto.

I further certify that on the 9th day of September, the 13th, 14th, 23d, 24th days of October and

261 the 12th day of November, A.D., 1879, I was attended at my office, No. 52 Broadway, in the City, County and State of New York, in the Southern District of New York aforesaid by Edward L. Andrews, Esq., solicitor, and of counsel for the complainants, W. Y. C. Humes, Esq., solicitor, and of counsel for defendants, and by R. T. Wilson, the witness, who was of sound mind and of lawful age, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole
262 truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness and from his statements, and after carefully reading the same to witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purposes of annexing the several Exhibits, and of sealing up and directing the same with this certificate of the reasons aforesaid for taking the said deposition, with my own hand, to the Court for which the same was
263 taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In witness whereof, I have hereunto set my hand and seal this 31st day of December, in the year of our Lord, one thousand eight hundred and
264 seventy-nine, and of the Independence of the United States the one hundred and fourth.

WILLIAM H. DELANCEY,

[L. S.] *Notary Public*,
Westchester County.

Acting in New York County under and by virtue of Chapter 807 of the Laws of 1873 of the State of New York.

COMPLAINANT'S EXHIBIT No. 1. 265

W. H. D. L.,—Spl. Exr.

OPINION OF CHARLES TRACY, ESQ.

The Tennessee Statute of 1852, Ch. 151, embraced in its provisions the Mobile and Ohio Railroad Company (§ 10).

That statute fixed upon the road and property of the company a first lien in nature of a mortgage in favor of the State, to the amount of State bonds advanced to the company (§ 3, § 4); and it made it unlawful for the company to create any lien or incumbrance which should have priority over or come in conflict with the State's lien; and the State's lien or mortgage was declared to have priority over all other claims existing, or to exist, against the company (§ 4). 266

The 12th section of that act is as follows:

"Be it enacted, that the State of Tennessee "expressly reserves the right to enact by the "Legislature thereof, hereafter, all such laws "as may be deemed necessary to protect the in- "terest of the State, and to secure the State "against loss, in consequence of the issuance "of bonds, under the provisions of this act; "but in such manner as not to impair the "vested rights of the stockholders of the com- "panies." 267

The company subsequently made two mortgages, or deeds of trust, the first of which expressly saves and reserves the rights and liens in favor of the State, and the second declares that it is subject to the lien of the first, and also that it should not interfere with the State's lien. 268

The act of 1869, c. 38, was passed in pursuance of the reserved power of legislation mentioned in sec-

269 tion 10 of the act of 1852. This act of 1869 provides for relieving the State from a part of its debts, by a scheme for retiring the State bonds, and transferring the State's first lien to new bonds made by the company, and certified by the comptroller, and which shall be a first lien on the road and property. The provisions of the act 1869 in this regard are clearly sanctioned by the act of 1852.

The bondholders under the first and second mortgages lose nothing by this subrogation of the hold-
270 ers of the new bonds to the prior lien of the State, and have not at law or in equity any right to dispute the priority of such new bonds.

The reservation of the act of 1852 is made in ample terms. It saves a right of enactment to protect the interest of the State, and to secure the State against loss by reason of issuing the bonds; and it constitutes the Legislature the judges of what enactments may be deemed necessary for such purposes. The Legislature having deemed it neces-
271 sary to pass the act of 1869 for the protection of this interest of the State, no question of its competency or validity is admissible.

Nor is there anything in the act of 1869 which does not lie clearly within the limits of the reserved power of legislation. It does not affect the first and second mortgages. It continues the lien of the State on the same property and to the same amount while it changes the payees or creditors to be protected by the lien. There is no satisfaction or ex-
272 tinguishment.

The sums to be paid to the State are not paid, but are made payable to the holders of the new bonds. The State ceases to be a creditor, and the new bondholders become creditors in its place. The company's obligation or debt, with the lien or charge for payment, continue to the new creditors.

The act of 1869, therefore, is clearly valid, and

the new bonds issued and certified as required by 273
it, have a first lien and a priority over the first and second mortgage bonds.

The preamble and resolutions adopted by the Board of Directors, May 25th, 1871, and the indenture executed by the company and Messrs. Duncan, Iselin and Wilson, dated July 1st, 1871, are in proper form for carrying the proposed arrangement into effect, and giving to the holders of the new bonds the benefit of a first lien on the company's property, through the parties named as 274
trustees.

(Signed) CHARLES TRACY,
50 Wall st., New York.

July 20, 1871.

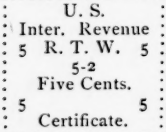
COMPLAINANT'S EXHIBIT No. 2.
W. H. D. L.,—Spl. Ex'r.

275

Memorandum of an agreement made this second day of May, A. D. 1870, at the City of New York, between The East Tennessee, Virginia and Georgia Railroad Company and R. T. Wilson, parties of the first part, and The Fourth National Bank of the City of New York, party of the second part.

Whereas, The East Tennessee, Virginia and Georgia Railroad Company is desirous of effecting the negotiation of its certain new or mortgage bonds issued or to be issued by it, in pursuance of authority duly given to it, which bonds upon the surrender to the State of Tennessee of its State bonds, in due payment of certain loans or aid heretofore given to the corporations, now duly consolidated into the aforesaid railroad company, are to 276

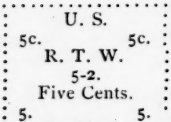
become a lien *pro rata* in amount and of equal validity with the unretired part of the State indebtedness upon the said railroad, the whole of said indebtedness being about three millions nine hundred and fifteen thousand dollars ($3,915,000), and the said railroad company is also desirous of providing any funds which it may become necessary to employ in effecting the surrender of the said State bonds, and the substitution of its said railroad mortgage bonds therefor under such authority.



And whereas, The Fourth National Bank has consented upon the conditions hereinafter stated to procure such negotiation of the said railroad mortgage bonds, and to procure certain advances upon the representation of R. T. Wilson, a director of the said railroad company, that the said company may lawfully make this agreement and upon his individual promise to guaranty to the said bank the prompt and full repayment by the said company of all advances made to it.

Now, therefore, in consideration of the premises and of the mutual covenants hereof, it is agreed:

First.—The said railroad company shall appoint and does hereby appoint the said Fourth National Bank its sole agent to receive and surrender to the State of Tennesee in pursuance of the authority above recited, State bonds to the amount of about three millions nine hundred and fifteen thousand dollars ($3,915,000), and the said railroad company will deposit with the said bank the whole issue of their new or railroad mortgage bonds issued or to be issued, as hereinbefore described, such appointment to be irrevocable until the close of the transaction contemplated hereby.



Second.—The said bank, as rapidly as the said 281
railroad bonds shall be fully and properly substituted for the said State bonds so surrendered, shall procure the negotiation and sale of the same as speedily as possible, at such prices as may be agreed upon by the said bank and railroad company. The said bank shall receive for its said services in securing such negotiation, a commission of two and one-half per cent. upon the par value of such bonds, except that when other parties shall sell any of the said bonds, then on such sales the said bank shall 282
receive one and one-quarter per cent. commission, and the party so selling the bonds, one and one-quarter per cent. commission.

In all cases, the expense of all advertising and printing as required, shall be at the expense of the said railroad company.

U. S. Inter. Revenue. 5c. 5c. R. T. W. 5–2. Five Cents. 5. 5. Certificate.

Third.—The said bank shall procure advances of funds to be made to the said railroad company, to an 283
amount not exceeding what may be requiring to purchase three million nine hundred and fifteen thousand dollars ($3,915,000) of Tennessee State bonds; provided that the said company shall pledge as security for such advances, the said State bonds, or its before—described new mortgage railroad bonds when substituted for State bonds, and provided that such advances never need exceed fifty per centum of the par value of the bonds so pledged. 284

The said bank shall be entitled to charge for all advances made to the said railroad company a commission equal to five per centum per annum on the amount thereof in addition to seven per centum interest, to be paid thereon by the said railroad company.

And such interest and commission shall be paid on 1st July, 1870, and quarterly thereafter.

385 The said company hereby authorizes the said bank to sell the said securities so to be pledged, and all substituted securities in case of non-payment of such advances at maturity, at public sale without notice, and to purchase the said securities at said sale.

U. S. Inter. Revenue. 5c. 5c. R. T. W. 5-2. Five Cents. 5. 5. Certificate.

Fourth.—The said bank shall from time to time
386 apply all the net proceeds of the aforesaid railroad bonds, as sold as above provided, to the repayment of the advances so as above made to the said railroad company, with interest and commissions so far as may be required for such purpose.

Fifth.—All advances so made and not sooner paid shall become due and payable on the first day of May, 1871. If on or before that time sufficient shall have been realized from the sale of the said
387 railroad bonds to repay all advances made, and all indebtedness to the said bank, then the said company may withdraw the balance of their bonds from the said bank.

If, however, not sufficient shall then have been realized to repay such advances, and all indebtedness to the said bank, then the said railroad company shall be bound to pay the balance against it at once, unless a satisfactory arrange-
388 ment for the continuance of this or a similar agreement is made. But in case no such agreement is made then the payment of such balance, if made, shall not entitle such company to the railroad bonds then unsold until it shall have paid to the said bank a commission of one and one-quarter per cent. upon an amount of such bonds at par, equal to the said balance against such Company.

U. S. Inter. Revenue. 5c. 5c. R.T.W. 5-2 Five Cents. 5 5 Certificate.

Sixth.—R. T. Wilson, in consideration that the 289
said Fourth National Bank enters into this agreement at his request, and upon his aforesaid representations, hereby guarantees to the said bank that the said East Tennessee, Virginia and Georgia Railroad Company will promptly pay to the said bank all its indebtedness arising under the arrangement contemplated by this agreement, and hereby waive all defenses, if any, which he or the said railroad company might have against 290
any such payment.

U. S. Inter. Revenue. 5c. 5c. R.T.W. 5–2 Five Cents. 5 5 Certificate.

In witness whereof the said corporations parties hereto have caused these presents to be executed by their respective presidents, and their respective corporate seals to be hereunto affixed, and the said R. T. Wilson has hereunto set his hand and seal the day and year 291
first above written.

EAST TENN., VA. & GA. R. R. CO.,
By THOMAS H. CALLAWAY,
Pres't.

In the presence of
JOE CALLAWAY.
E. S. DELANY.

East Tennessee, Virginia & Georgia SEAL. Railroad Co.

292

JAMES G. MITCHELL,
Sec. and Treas.

FOURTH NATIONAL BANK OF THE CITY OF NEW YORK,
By P. C. CALHOUN, Pr.
R. T. WILSON.

293 The East Tennessee, Virginia and Georgia Railroad Company has fully paid and discharged all its liabilities to the Fourth National Bank of New York growing out of transactions made under the foregoing contract.

New York, April 17th, 1871.

P. C. CALHOUN, Pr.

STATE OF TENNESSEE, } ss :
Bradley County. }

294 On this 4th day of May, in the year 1870, before me, Edwin S. DeLany, a notary public, personally came Thos. H. Callaway, the President of the East Tennessee, Virginia and Georgia Railroad Company, of the town of Cleveland, in the State of Tennessee, with whom I am personally acquainted, who, being by me duly sworn, said that he resided in Cleveland, Bradley county, Tennessee; that he was the president of the said East Tennessee, Virginia and Georgia Railroad Company; that he knew the cor-
295 porate seal of the said company; that the seal affixed to the within instrument was such corporate seal; that it was affixed by authority of the Board of Directors of said company, and that he signed his name thereto as such President by the like authority.

Witness my hand and official seal at Cleveland, Tennessee, date above written.

[SEAL.]

EDWIN S. DELANY,
Notary Public,
296 Bradley County,
Tennessee.

Endorsed:

Dated 2d May, 1870. The East Tennessee, Virginia and Georgia Railroad Company, R. T. Wilson, and The Fourth National Bank of the city of New York. Agreement.

COMPLAINANT'S EXHIBIT NO. 3. 297

W. H. D. L., *Special Examiner.*

R. T. WILSON & CO.,

BANKERS AND COMMISSION MERCHANTS,

44 Broad Street.

R. T. WILSON,
J. M. JOHNSON,
B. F. WILSON, 298
W. P. ORME,
L. L. CALLAWAY,

NEW YORK, April 15th, 1870.

Captain Joseph Jaques, V. P. E. Tenn., Va. and Ga., R. R. Co.

DEAR SIR:—We propose the following:

1st.—To furnish bonds and coupons of the State of Tennessee to you with which to pay your debt 299 to the State, to the extent of three millions of dollars, at fifty-five cents on the dollar in cash. You are to give us the option for three months, of furnishing the balance of the debt you owe the State, at the same price, accrued interest to be counted at the same price.

2nd. We will undertake as financial agents of the road, to negociate for the necessary money to carry out this contract and to sell the bonds to reimburse the same, employing such assistance at the expense 300 of the road as may in our discretion be necessary, leaving our compensation to be fixed by the road after the transaction is concluded.

3rd. If we are continued as the financial agents of the company and no providential interference presents or interferes, then we guarantee that your debt of say $3,915,000 to the extent retired shall be

done at not exceeding the rate of three millions of your company bonds for the whole.

Yours truly,

R. T. WILSON & CO.

I certify that the above is a true copy.

S. S. PALMER.

CLEVELAND, TENN., April 21, 1870.

MESSRS. R. T. WILSON & Co.,

44 Broad Street, New York.

Gentlemen:

Your offer to sell bonds to this road, made through its Vice President, Capt. Joseph Jaques, bearing date of the 15th instant, is received, and I have telegraphed our acceptance of your proposition, which acceptance I now confirm.

You will now proceed to negotiate for the necessary money to carry out your proposition, and you are hereby authorized to hypothecate the State bonds for money so raised; also, to pledge this company's credit for the same, and whenever the extent of your ability to deliver State bonds justifies your moving in the matter of surrendering State bonds of the State of Tennessee in manner as the acts of February 25, 1869, and acts amendatory thereto provides, then you are hereby authorized to surrender the same to the Comptroller of the State of Tennessee or to his agent in New York.

With a view to this action on your part this company hereby authorizes you to use of its mortgage bonds to the extent which you may surrender State bonds, and when you surrender State bonds you will cause the certification of the Comptroller of the State of Tennessee to be affixed on our mortgage or company bonds, in manner as the law provides for, and when so certified you are authorized and directed to hypothecate them against money borrowed until

snch time as you can sell them at such prices as 305
this company may from time to time authorize.

THE EAST TENNNESSEE, VIRGINIA & GEO. R.R. CO.,
By THOS. H. CALLOWAY,
Pres't.

April 20, 1870.

THOS. H. CALLAWAY, *Pres't*,
Cleveland, Tenn.

The proposition won't be made before to-morrow, 306
if then; meantime I want to know if you accept on condition that you can control the price of your bonds for one year.

R. T. WILSON,
F. Agent.

April 20, 1870.

THOS. H. CALLAWAY, *Pres't*,
Cleveland, Tenn.

You know we can't issue only as we surrender, 307
and therefore could not make any of the bonds available as a means on which to raise money. They will insist on having control of all until enough are sold to pay advances, mainly, as they say, to avoid competition in selling. I believe this can be satisfactorily arranged either with the present or other parties. Also, that we can control the price of our bonds for one year.

R. T. WILSON,
F. Agent. 308

CLEVELAND, TENN., April 20th, 1870.

R. T. WILSON,
44 Broad street.

I am willing to accept your proposition, provided the whole issue of bonds are not to be tied up so that

309 in case we may need money for any other purpose, that we will have something to raise it on, and we must have the right to price our bonds.

THOMAS H. CALLOWAY,

Pres't.

CLEVELAND, TENN., April 21, 1870.

R. T. WILSON,

44 Broad street.

310 I accept your proposition.

THOS. H. CALLOWAY,

Pres't.

NEW YORK, May 25, 1870.

CAPT. J. JAQUES,

V. P. East Tenn. and Va. R.R., Knoxville, Tenn.

Dear Sir :—Haven't received the promised letter after seeing Mr. Calloway, but we suppose that you
311 have agreed to issue a new bond, and hence we are having one prepared to be ready by the 25th instant.

We now give notice that we will sell your road under our option, enough more bonds than we have heretofore agreed to supply to pay off your State debt with.

Yours truly,

(Signed) R. T. WILSON & CO.

312

COMPLAINANT'S EXHIBIT No. 4.—W. H. D. L., *Spl. Exr.*

NEW YORK, September 30, 1870.

BOND RETIRING ACCOUNT. No. 1.

E. T., Va. and Ga. R. R., in account current with R. T. WILSON & Co.

DR. 1870.		AMOUNT.	DAYS.	INTEREST.
July 1,	To Revenue Stamps on 3,000,000 bonds at 1.25 per 1,000	3,150	91	95 55
Sep. 30,	" Interest at 12 % on 33,933.33 from 30 Sep. to 31 Oct., in order to bring int. acct. to 30 Sep., say 31 days.....			350 64
30,	" Balance int. acc. ...			23,202 30
30,	" " down to credit in cash 30 Sept., 1870.....	1,139,750 55		
		1,142,900 55		23,648 49

E. & O. E.

1870.		AMOUNT.	DAYS.	INTEREST.	CR.
July 1,	By 500,000 bonds, 82½ less com. 2½	400,000	91	12,133	40
25,	100,000 "	80,000	67	1,786	66
25,	accrued interest.....	566 67	67	12	66
26,	150,000.....	120,000	66	2,640	
26,	accrued interest.....	729 20	66	16	04
27,	150,000.....	120,000	65	2,600	
27,	accrued interest.....	758 30	65	16	42
28,	100,000.....	80,000	64	1,706	66
28,	accrued interest.....	525	64	11	20
Aug. 3,	150,000.....	120,000	58	2,320	
3,	accrued interest.....	962 50	58	18	62
Sep. 2,	17,000.....	13,600	28	126	94
2,	accrued interest..... ...	204 94	28	1	91
24,	133,000	106,400	6	212	80
24,	accrued interest.....	2,172 33	6	4	34
27,	50,000	40,000	3	40	
27,	accrued interest.....	845 98	3		84
Oct. 31,	40,000.....	32,000			
31,	accrued interest.....	933 33			
Sep. 30,	Interest at 12 %.....	23,202 30			
		1,142,900 55		23,648	49
Sep. 30,	By balance down.....	1,139,750 55			

436

316 315 314 313

320 319 318 317

Copy.

NEW YORK, December 31, 1870.

BOND RETIRING ACCOUNT No. 2.

East Tenn., Va. and Ga. R. R. Co., in account current with R. T. WILSON & Co.

DR. 1870.		AMOUNT.	INTEREST.	1870.		AMOUNT.	DAYS.	CR. INTEREST.
Dec. 31,	To balance interest acct.....		34,952 36	Sept. 30,	By balance rendered.....	1,139,750 55	92	34,952 36
31,	" down to your credit	1,174,702 91		Dec. 31,	Interest 12 % per annum.....	34,952 36		
		1,174,702 91	34,952 36			1,174,702 91		34,952 36
				Dec. 31,	By balance down.....	1,174,702 91		

E. & O. E.

434

NEW YORK, March 31st, 1871.

BOND RETIRING ACCOUNT No. 3.

East Tenn., Va. and Ga R. R., in account current with R. T. WILSON & Co.

DR. DATE. 1871.		AMOUNT.	DAYS.	INTEREST.
Mar. 31,	To balance interest acct			568 78
31,	" down to your Cr. transferr'd to general acct. of E. Tenn., Va. and Ga. R. R. Co..	41,025 73		
		41,025 73		568 78

CR. DATE. 1871.			AMOUNT.	DAYS.	INT'ST.
Feb. 10,	By 20,000 bonds 82½, less com.	2½.	16,000	49	261 34
10,	accrued interest.		155 56	49	2 55
14,	20,000 "	2½.	16,000	45	240 00
14,	accrued interest.		171 11	45	2 56
Mar. 8,	10,000 "	2½.	8,000	23	61 33
8,	accrued interest.		130 28	23	1 00
31,	Interest, 12 %.....		568 78		
			41,025 73		568 78

E. &. O. E.

435
81

324 323 322 321

Statement of the retirement of the debt due the State of Tennessee by the East Tennessee, Virginia and Georgia Railroad Company, effected by R. T. Wilson & Co., New York.

1870.			
July 1,	To total indebtedness cancelled.....	$4,117,761 10	
		$4,117,761 10	
April 15,	To 3,117,750 Tenn. new at 55 per cent...	$1,714,762 50	
May 25,	" 919,090 52 " " ...	505,499 79	
July 1,	" Interest at 1 per cent. per month from 15th April to date on $1,714,762 50, say 76 days.	43,440 74	
"	" Interest at 1 per cent. per month from 25th April to date on $505,499 79, say 36 days.....	6,606 00	
		$2,270,309 03	

1870.		
July 1,	By January, 1870, interest included in the cancelled debt, same paid and in the general account of the road as rendered	$80,909 48
	" Amount paid in currency to balance and charged in general account.....	11 10
	" Balance to be paid in Tenn. Bonds at 55 per cent., as below...	4,036,840 52
		$4,117,761 10
April 15,	By Interest on $2,860,320 85 at 6 per cent. the date of first contract to deliver bonds, say $35,754 at 55 per cent....	$19,664 70
July 1,	" Interest at 1 per cent.per month on same	498 18
May 25,	" Interest on $843,202.56 at 6 per cent. the date of second contract to deliver bonds, say $4,919 at 55 per cent.....	2,705 45
July 1,	" Interest at 1 per cent. per month on same	32 46
April 15,	" 29,000 old bonds taken in this account at 55 per cent.....	15,950 00
"	" 9 per cent. interest on same at 55 per cent....	1,435 50
"	" 9 coupons sent us at 55 per cent.....	148 50
July 1,	" Interest on same at 1 per cent per month	444 18
"	" Interest at 5 per cent on average of your general account from 15 April.....	1,714 64
"	" Balance charged to your general account as cash this day.....	2,227,715 42
		$2,270,309 03

436

Statement of East Tennessee, Va. & Ga. R. R. 329

7 per cent. Bonds sold.

DATE.	QUANTITY.	PRICE.	AMOUNT.	
1871.	M.			
Mar. 25,	200,000	82½ and Int.	168,266 67	
31,	10	"	8,425 00	
Apr. 3,	10	"	8,428 89	
8,	10	"	8,438 61	
10,	65	"	54,876 25	
11,	65	"	54,888 89	
15,	75	"	63,391 67	
18,	75	"	63,435 42	330
19,	100	"	84,600 00	
20,	50	"	42,309 72	
22,	300	"	253,975 00	
25,	90	"	76,245 00	
"	10	"	8,471 67	
Dec. 5,	20	93½ and Int.	18,700 00	
1872.				
Jany. 13,	3	90 "	2,700 00	
15,	10	90 "	9,027 22	
19,	100	89 "	89,000 00	
25,	20	90 "	18,092 05	
Feby. 8,	5	90 "	4,536 44	
12,	10	90 "	9,080 55	
21,	65	90 "	59,135 75	
Apl. 26,	100	90 "	92,236 11	331
Dec. 11,	17	89 "	15,662 19	
12,	16	89 "	14,744 00	
1873.				
Jany. 8,	10	" "	8,913 43	
17,	5	" "	4,465 34	
27,	6	" "	5,369 92	
Feby. 5,	2	" "	1,793 42	
7,	2	" "	1,794 19	
8,	10	" "	8,972 87	
11,	5	" "	4,489 31	
Mar. 1,	10	" "	9,013 15	
14,	5	" "	4,519 04	
29,	7	" "	6,346 80	
Apr. 4,	12	" "	10,894 03	
May 28,	5	90 "	4,640 96	
29,	2	90 "	1,856 77	332
31,	5	89 "	4,593 83	
June 7,	5	" "	4,600 55	
July 11,	8	" "	7,135 35	
16,	5	" "	4,464 38	
23,	10	90	9,042 19	
1877.				
Apr. 21,	3	92	2,760 00	
May 18,	1	92	920 00	
July 17,	1	91	910 00	
Aug. 1,	20	90	18,000 00	
9,	1	91	910 00	

333	Oct.	22,	12	90	"		11,060 05
	Nov.	3,	8	90	"		7,391 78
		14,	8	90	"		7,408 66
		16,	20	90	"		18,529 32
		19,	33	90	"		30,592 36
							1,430,054 80
		Less 2½ per cent. com. charged on—					
		1,393 bonds.....					$34,825 00
		1,647,000.....					$1,395,229 80
		1,390,000.....				82½	1,139,750 55
		50,000.....				"	41,025 73
		3,087,000					$2,576,006 08
334		Conditional bonus received on first sales.....					4,500 00
							$2,580,506 08

Av'ge per bond.....$835 92 7-10

COMPLAINANT'S EXHIBIT No 5.

335 W. H. D. L., Spl. Ex'r.

NEW YORK, May 13th, 1870.

MESS. A. ISELIN & Co. :

Gentlemen :

I now beg to confirm in writing the verbal agreement had with you this day, which I understand to be as follows :

336 1. The East Tennessee, Virginia and Georgia Railroad Company is to pay off the debt due the State of Tennessee, for the loan of the bonds of said State in manner as the law provides, by surrendering State bonds to the Comptroller or his his agent.

2. The said railroad company is to issue a mortgage bond, which is to take the place of the lien

held by the State, for an amount not exceeding 337
three millions five hundred thousand dollars (3,500,000) principal and interest of said bonds to be payable in currency, and to be in denominations of one thousand dollars bearing seven per cent. per annum interest, with coupons therefor attached, payable semi-annually, and running to maturity within twenty, twenty-five or thirty years, as the road may elect.

3. You are to purchase of the said railroad 338
bonds, and by the acceptance of this do contract for and purchase five hundred thousand dollars at eighty-two and a half cents on the dollar, and accrued interest. This purchase secures to you the option of purchasing fifteen hundred thousand more of said bonds at the same price, which option is to run until the thirty-first day of next July.

4. The five hundred thousand dollars which you have purchased to be delivered to you by the road 339
so soon as the road can prepare them and get the State debt paid, which will probably be by the first day of July next, or soon thereafter, but not later than the thirty-first day of that month, and when delivered they are to be paid for and in like manner, in case of further purchases which you may make on your option.

5. Of the issue of said railroad bonds the road reserves one million dollars and hereby agrees not 340
to sell them without your consent before the expiration of six months and of the remaining amount, say five hundred thousand dollars, R. T. Wilson & Co., of this city, and such parties as they may associate with them, have the option to purchase the same, at the same price and for the same time which is given you on your option, with the fur-

341 ther understanding that the bonds so to be purchased by R. T. Wilson & Co. are to be offered by you, for sale in Europe, during the time your option runs, in conjunction with your bonds, upon such terms and conditions between you and them as may be agreed upon, it being understood that the terms between you and R. T. Wilson & Co. do not apply to or effect the road.

6. This contract not to be binding on you until you examine the road, which you are to do next week,
342 and then report whether you accept or decline it.

Yours truly,

R. T. WILSON,
for the East Tenn., Virginia
& Ga. R. R. Co.

A. ISELIN & Co.,
P. O. Box 910, New York.

343

NEW YORK, May 13th, 1870.

R. T. WILSON, Esq., Financial Agent,
East Tennessee, Virginia & Georgia R. R. Co.

Dear Sir: We are in receipt of your favor of today, which is in conformity with our verbal agreement according to which we bind ourselves to take ($500,000), five hundred thousand dollars in bonds
344 of the East Tennessee, Virginia & Georgia R. R. at 82½, eighty-two and a half cents on the dollar and interest, on condition that you give us the option of taking fifteen hundred thousand ($1,500,000), more of said bonds at same price.

These bonds to be part of an issue of $3,500,000, three million five hundred thousand dollars, secured by a first mortgage on the railroad, the Company

having first satisfied the State lien according to law. 345

This contract not to be binding until we shall have examined the road and declared our intention of accepting or declining.

Your truly,
A. ISELIN & CO.

Endorsed,

"A. ISELIN & Co.,
Accepted Contract 346
May 13th, 1870."

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, May 13th, 1870.

MESSRS. R. T. WILSON & Co.,
Present.

Gentlemen: We are in receipt of your favor of to-day, in accordance with which we are to offer for 347 sale in connection with the bonds of the East Tennessee, Virginia & Georgia R. R. Co., which we have contracted, or for which we have an option, $500,000, five hundred thousand dollars of said bonds, on which you have an option on the following terms:

1st. The $500,000 which we are to purchase of the Company are to be first sold, then sales to be made for our joint account, pro rata to our respective interests and at such prices as we may fix above what 348 the bonds cost you with interest and charges.

Our charge is to be ½%, one half per cent. for drawing exchange against bonds sold.

The bankers in Europe are to charge 1½%, one and half per cent. commission for selling bonds.

Yours truly,
A. ISELIN & Co.

349 "Copy"

NEW YORK, May 27th, 1870.

Messrs. ADRIAN ISELIN & Co.

Gentlemen: Referring to the letter of R. T. Wilson, Financial Agent of the East Tennesse, Virginia & Georgia Railroad Company, addressed to you under date of the 13th instant, we beg to say that we have forwarded a copy of it to Knoxville, Tennessee, for confirmation by said road, and expect
350 its return in due course of mail, with the official signature of the proper officers thereto affixed.

In the meantime we hereby guarantee the performance or acceptance by the road of the contract made through its Financial Agent previously alluded to.

Yours truly,

(Signed) R. T. WILSON & CO.

A. ISELIN & Co.,
351 P. O. Box 910, New York.

NEW YORK, May 27th, 1870.

R. T. WILSON, Esq., Agent, &c.,

East Tennessee, Virginia & Georgia R. R. Co.

Dear Sir: Having examined your road as con-
352 templated in our letter, May 13th, we hereby express our satisfaction therewith and agree to take the bonds as therein provided.

Yours, respectfully,

A. ISELIN & CO.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, May 28th, 1870. 353

R. T. WILSON, Esq., Agent, &c.,
East Tennessee, Virginia & Georgia R. R.:

Dear Sir: We omitted in our letter of yesterday to mention that our contract of May 13th had been modified to the extent that $500,000, five hundred thousand dollars of the first mortgage bonds of the East Tennessee, Virginia & Georgia R. R. are to be reserved and not issued until the claim of the United States Government against the company 354 shall have been settled or paid.

By confirming this you will oblige.

Yours respectfully,

A. ISELIN & CO.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, July 28th, 1870.

R. T. WILSON, Esq., Agent,
East Tennessee, Va. & Ga. R. R. Co.: 355

Dear Sir: We hereby propose to you to buy of the $1,500,000, fifteen hundred thousand dollars, East Tennessee, Va. & Ga. R. R. Co. first mortgage bonds remaining to be sold—

$150,000 three days after the acceptance of this our proposition, at 82½ and interest;

$150,000 within 60 days, at 82½ and interest, on condition that you give us the option to purchase 356

$900,000 of the remainder at same price for six months from date, should war in Europe continue for that period, or should peace have been made before six months, for sixty days after the declaration of peace.

Yours respectfully,

A. ISELIN & CO.

"Copy." NEW YORK, Aug. 2, 1870.

Messrs. A. ISELIN & Co.:

Gentlemen: Yours of the 28th ultimo, proposing to purchase three hundred thousand dollars of the bonds of this company (1st mortgage 7 %), is received.

I hereby accept the proposition therein contained, and give the option on nine hundred thousand dollars more of the bonds for the time, as stated by you.

Yours truly,

THE EAST TENNESSEE, VA. & GA. R. R. CO.

By R. T. WILSON,
Financial Agent.

A. ISELIN & Co.,
P. O. Box 910, New York.

NEW YORK, 17th March, 1871.

MESS. R. T. WILSON & Co.,
Financial Agents of East Tennessee and Virginia R. R.:

Gentlemen: We confirm the verbal arrangement made with you in relation to the unsold bonds of the East Tennessee, and Virginia R. R. Co. We agree to purchase from you on the 2d May, or sooner, two hundred and fifty thousand dollars of bonds ($250,000), including the $50,000 already purchased at 82½, and interest, on condition of your giving us the option for four months from date of eight hundred and fifty thousand dollars more at the same price. Should we call for the bonds before the 2d May you are to pay us the difference of interest the bonds bear and 12% per annum, the rate at which our loans to you have been made up to that date.

We will also loan you ourselves, or arrange with 361
the Gallatin National Bank to loan you, three hundred thousand dollars, with East Tennessee and Virginia R. R. bonds as security, for four months from date or to the expiration of our option at 12% up to the 2d May and 10% after that date, this to be in addition to the amount of the bonds to be purchased by us.

Please inform us whether you agree to this arrangement.

Yours very truly, 362

A. ISELIN A CO.

Endorsed—

"Proposition of Mess. A. Iselin & Co. Rel
"ative to the Purchase of the Last
"Bonds."

363

"Copy." NEW YORK, March 17, 1871.

MESS. A. ISELIN & CO.:

Gentlemen: We own your letter of even date, and in reply beg to say that we accept the proposition it contains.

We would remark that our understanding of that part of your letter which refers to your offer of a loan of $300,000, is that the road can return the whole am't or any part of it, at any time before 364
maturity, and receive credit at the same rate of interest and commission which the loan bears.

Yours truly,

(Signed.) R. T. WILSON & CO.,
Financial Agents of the East Tenn.,
Va. & Ga. R. R. Co.

365 COMPLAINANT'S EXHIBIT NO. 6.
W. H. D. L., Spl. Exr.

NEW YORK, , 187 .

Memorandum from A. Iselin & Co.,
48 Wall street.

Oct. 18/1870. $75,00. bot. out Interest R. T. Wilson & Co.

E. T. V. G. R. R.

366

COMPLAINANT'S EXHIBIT No. 7.
W. H. D. L., Spl. Ex'r.

JUNE 11th, 1878.

367 MR. JOHN T. TERRY,

Care of Messrs. E. D. MORGAN & Co.

Dear Sir: Respecting the proposed action of holders of Tennessee bonds against Tennessee railroads about which you spoke to me, I have to say: That I have conferred with some of the parties largely interested in Tennessee railroads who confirm my views as stated to you, viz: That the rail-
368 roads as such would not contribute anything whatever towards a fund to induce a settlement of the State debt on account of apprehended danger to them through the action of Tennessee bondholders who may seek to hold them for Tennessee bond liabilities under the various Acts of the Legislature of that State granting aid to railroads, &c. From the stand point of the roads' view of that

question they have nothing whatever to fear, and I 369
apprehend it will be quite impossible to convince any of them of their error, if it be one, which, by the way, I scarcely believe to be possible—until they are convinced by the highest tribunal of the country.

But while this is unquestionably the position of the railroad men of Tennessee, yet I am happy to say truthfully that I do not know a single railroad man in or out of the State connected with Tennessee roads who is not now using and who has 370
not for the past three years used all their influence in the direction of the payment of the entire debt, if deemed to be practicable, or as an alternative of this to procure the best possible settlement that could be obtained for the bondholders. As a class they have intelligence enough to know the withering effects upon the general prosperity of the State of repudiation, and the State's prosperity and welfare is their prosperity and welfare, for you as a commercial man well know that of all business 371
that you can conceive of the railroad traffic business is more directly and quickly effected and shows the effects of prosperity or the reverse quicker and more directly than any other line of business.

I am well aware that the charge you made yesterday to the effect that the railroads have for previous to the past three years stood in the way of the settlement of the Tennessee debt, because it has been to their interest to get the price of bonds down so that they could buy them and pay off their debts 372
to the State, has been a current one; and while it has been as to nearly every railroad man in the State, with perhaps one or two unimportant exceptions, a slander upon them, yet it has had just enough of plausibility about it to mislead and give it currency. When I drew the original act of Feb. 25, 1869, for I was its author,

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to the State, has been a current one; and while it has been as to nearly every railroad man in the State, with perhaps one or two unimportant exceptions, a slander upon them, yet it has had just enough of plausibility about it to mislead and give it currency. When I drew the original act of Feb. 25, 1869, for I was its author,

373 although it was so changed that it would scarcely be called the same, this act was prompted and supported not alone by the railroad men of the State, but largely by the best men all over the State, as being the only measure by which either the State or railroads could be saved. It was apparent to all men of even moderate sagacity that the railroads could not possibly meet the interest on their indebtedness, and pay the sinking fund, to say nothing of meeting the early maturing bonds. The penalty
374 for a failure to do this was the appointment of a Receiver by the Governor. Experience in this State-receivership business, clearly demonstrated that instead of being a remedy, it became the greatest possible evil. State Receivers administered the roads so badly that in almost every single instance the State not only failed to collect any revenue, but was actually mulcted for a large sum to pay expenses of operating the road. In addition to this great evil, so long as the railroads were indebted
375 to the State, the temptation for them to so influence legislation as to cause a default in the payment of coupons in, order that they might buy them up at a discount and pay them over to the State, was so great that every sincere friend of the State felt great solicitude for its result. But while this was so manifest, and while it was so manifestly for the interest of the State to have the Act of Feb. 25, '69, passed and the R. road debt to the State paid off, that it would appear that every wayfaring man,
376 though a fool, should have seen it as he ran. Yet such was not the case, but on the contrary many good men and many very bad men opposed the passage of the bill, and the result was a bitter contest. The good men feared it was a measure to aid railroad men to speculate in Tennessee bonds, or at least some of them said so, while others said it would be wholly impracticable in operation, be-

cause of the inability of the railroads, on account 377
of their broken down and exhausted condition and
credit to avail of its provisions, while many of the
bad men feared it might do just what it has done,
viz: enable the roads to pay their debts and the
State theirs, get them beyond the reach of State re-
ceiverships, with all their opportunities for plunder
and place, and thus prevent them and their friends
from keeping the roads in a shape out of which they
hoped to reap rewards one way or another. To de-
feat the success of the measure they have used 378
every argument that could avail. When they saw
the roads making rapid progress in relieving their
debts they used the charge that they were conspir-
ing to put down the price of bonds, while at one
time there may have been less support from rail-
road men in the direction of tax levies and payment
of interest by the State than there should have
been, yet there has been, with perhaps one or two
exceptions, nothing of this kind for the last three
or four years, but on the contrary nearly all rail- 379
road men have been zealous supporters of the cred-
it of the State. I, for one, can say conscientiously
that I have at all times taken the broad view that
neither State nor railroads would amount to any-
thing unless a proper settlement with the creditors
of the State was effected in one way or another that
would be permanent, and to support this, or rather
to prepare the way to make such a settlement prob-
able and lasting, I not only had the measure or Act
of Feb. 25, 1869, under which railroads were au- 380
thorized to retire their indebtedness, introduced
and passed, but I also suggested and aided in pass-
ing the bill for the sale of the class of roads known
as insolvent roads, with a view of bringing about a
complete separation of Railroads and State, partly,
and, I may say, largely, in order to place the State
in a position where it would be to the interest

of all who might be in the position to have a voice in her legislative councils, to aid and support an honorable settlement with her creditors, which I have looked upon as being the first and necessary foundation stone upon which to build all prosperity, either railroad, State or individual. To show how faithfully I have preserved this line of policy, I may be excused for stating that nearly fifteen millions of dollars of the railroad debt has been retired by my house, and its associates, in which I have taken the lead. Now, without boasting my friendship for the State, who can say as much, who in the last twenty-five years has contributed so largely as I have done towards making it possible for Tennessee creditors to even get anything like their just rights, and remember while I have done this I have never been directly or indirectly responsible for the creation of one dollar of indebtedness for any railroad for any other purpose which has not been paid in full with interest, and yet I am usually classed as one of the railroad men in Tennessee of more or less influence in the affairs of the State. Now this much for the past relations of the railroad men, and to the State and back to the question of the rights of Tennessee bondholders against railroads, if they have any, which I most emphatically deny, but allow me to attract your attention to the fact that in the case of the Mobile and Ohio Railroad in the United States Circuit Court at Memphis, and this subject has been before that tribunal fully argued by able counsel, and decided by Judge Trigg, without even expressing a doubt, to the effect that the lien of the State upon railroads for aid granted to them under the laws of Tennessee granting the aid, was taken solely for the State and was personal to it alone, and not in any manner or shape for the benefit of the holders of Tennessee bonds which had been issued

to railroads and by them sold to the public. This 385
is precisely what Judge Trigg decided, and it is what all railroad men have been advised by the best legal counsel they could obtain, and is in perfect harmony with the legislative construction and practice of the State; but as the adverse party to this decision have appealed to the United States Supreme Court at Washington, where the case is now pending, and where the decision of the Circuit Court at Memphis will be reviewed, I submit that long before any bondholder could now get his case 386
before that tribunal, it will have been tried just as fairly as it will ever be possible for him to have it tried, and I think even more so, because I don't believe that, taken alone, there is enough in his claim, if made as the prime cause of the action to induce any court to entertain it, while in the Mobile and Ohio case he has the advantage of getting his cause before the highest tribunal of the land, not directly, but collaterally in just as good a shape to test its merits as if it were 387
the prime cause of the action.

Now, these being the facts in the case, while so stated at the outset no railroad man that I know will give one dollar on account of the supposed claim of bondholders, or rather, to get the State to settle the its debts in order to avoid that question, yet all will cheerfully co-operate with the State creditors in any and all practicable means by which *it may be hoped* to reach a settlement with the State upon terms satisfactory to its creditors, and a few of the railroad 388
men are using their best endeavors to get an early hearing of the Mobile and Ohio case at Washington, among whom I am one; as the plaintiff in one branch of that case—which, as previously stated, will just as effectually settle the case as to the right of Tennessee bondholders against railroads, as it would be possible for the bondholders to do, by all the suits

389 they could bring, and do it too from one to three years sooner than they could get their case before that Court and be heard.

Bearing on the Mobile and Ohio case, I beg to hand you herewith the brief of Messrs. Humes & Poston and Joseph B. Heiskel, and invite your attention to the argument beginning on page 12 of the same.

I will at all times take great pleasure in co-operating with the creditors of the State in their efforts
390 to procure an honorable settlement. I feel that my position is such as to make it possible for me to render them some assistance.

I remain, with much respect,

Yours truly,

R. T. WILSON.

391

COMPLAINANT'S EXHIBIT No. 8.

W. H. D. L., Spl. Exr.

Statement Mobile & Ohio Railroad with the State of Tennessee to 1st January, 1872.

To amount of principal.....	$1,684,800	
" Int. to 1st Jany., 1872.....	100,446	
		$1,785,246 00
" Cost of Tenn. Bonds, with interest and commission to 1st January, 1872	1,142,003 56	
392 " Disct. on 1,685,000 Co. Bonds at 17½ per cent.	294,875	1,436,878 56
		$348,367 44

RESPONDENT'S EXHIBIT No. 1. 393

W. H. D. L.,—Spl. Exr.

FINANCIAL.

EAST TENNESSEE,
VIRGINIA AND GEORGIA RAILROAD

FIRST MORTGAGE 7 PER CENT. BONDS,
REDEEMABLE 1900.

Interest payable 1st of January and 1st of July in the City of New York. 394

The mortgage is for $3,500,000, on a road 270 miles long, which has been in successful operation for many years. The lien is about $13,000 per mile, which makes it, with few exceptions, the smallest issued on any road in the United States. It was created for the sole purpose of paying off the debt due the State of Tennessee, amounting to $4,117,-761.10.

An examination into this security will prove it to be one of the best ever offered in this market.

For terms and further particulars apply to

GALLATIN NATIONAL BANK,
No. 36 Wall Street,
Agent for the sale of the bonds. 395

This advertisement appeared in Commercial Advertiser, daily Tribune, World, Times, Journal of Commerce, Evening Post, and weekly Financial Chronicle, of New York City.

December 31, 1870.

FINANCIAL.

SEVEN PER CENT FIRST MORTGAGE BONDS 396

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due

397 to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

398 This advertisement appeared in daily Evening Post, World, Commercial Advertiser, Bulletin, Times, Tribune, Observer, Christian Advocate, Independent, and Financial Chronicle, of New York City, and Union of Brooklyn.

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399 RESPONDENTS' EXHIBIT NO 2.

W. H. D. L., Spl. Ex'r.

(Copy.) NASHVILLE, 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the Sinking Fund of the East Tenn. & Geo. Railroad Company, and placed the amount, fourteen thousand dollars, to the credit of the said East Tenn. & Geo. R.R. Co.

400 The above fourteen bonds thus cancelled were put into the Sinking Fund of the East Tenn. & Geo. R.R. Co. in place of twelve East Tenn. & Va. R.R. Co.'s endorsed bonds and two Nashville & Chattanooga R.R.Co. endorsed bonds previously purchased for ac. of East Tenn. &Ga. R.R. Co.'s Sinking Fund.

G. C. TORBETT,)
J. T. DUNLAPP, Comp't } Sinking Fund Commissioners.

No. 14. NASHVILLE, November 20, 1861. 401

Received from the East Tennessee & Georgia Railroad Co. Nine Tennessee State six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 4333, 4334, 5851, 9584, 9086, 7113, 10,415, 4332, 2068.

These Bonds are received on account of the payments due by said Company as Sinking Fund, when next called for, and are now cancelled under act of 1859-60, ch. 93.

ISHAM G. HARRIS, Governor. 402

9 Bonds. J. T. DUNLAP, Comptroller.

G. C. TORBETT, Pres. Bank of Tenn.
Com. of Sinking Fund.

CHATTANOOGA, June 4, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. Bonds each for one thousand dollars.

These bonds are received on account of the payment due by said Company as Sinking Fund, and 403
are now cancelled under Act 1859-60, chap. 93.

100 Bonds.

ISHAM G. HARRIS, Governor.
G. C. TORBETT, Pres. Bank of Tenn.

CHATTANOOGA, June 4, 1862.

Received from the East Tenn. & Ga. R.R. Co. eleven endorsed bonds, each for one thousand dollars and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. 404

These Bonds are received on account of the payment due by said Company as Sinking Fund, and after cancellation returned to said Company under act of 1859-60, chap. 93, sec. 2.

11 Bonds.

ISHAM G. HARRIS, Governor.
G. C. TORBETT, Pres. Bank of Tenn.

405 I, J. G. W. Blackburn, Comptroller, certify the above is a true copy of the original on file in my office.

[Compt. seal.] In witness whereof I have hereunto set my seal of office this 1st day of Feb. 1868.

G. W. BLACKBURN,
Comptroller.

406

407

408

RESPONDENT'S EXHIBIT No. 3.—W. H. D. L., Spl. Exr.

DR. STATE LOAN. CR.

1861.			1860.		
June 29,	State Loan Dr. to Sinking Fund: For 2 State Bonds cancelled, see James Plunkett Letter, July 19, '61, filed with Sinking Fund Papers	$2,000	June 30,	By balance	$1,162,000
Nov. 5,	State Loan Dr. to Sinking Fund: For 14 State Bonds, 1 M each cancelled and receipted for	14,000			
1862.					
Apr. 30,	State Loan to State Bonds: Commissioners of Sinking Fund receipt for 9 Bonds, Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,113, 10,415, 4,332, 2,068, dated Nov. 20, '61	9,000			
June 4,	Sundries to Bonds purchased: Endorsed bonds, 11 bonds of this Company, cancelled, Nos. 27, 42, 43, 59, 79, 49, 45, 50, 100, 51, 46. See Sinking Fund Commissioners' receipt dated Chattanooga, June 4, 1862				
	State Loan for 100 State 6 per cents., $1,000 each, cancelled, see Sinking Fund Commissioner's receipt as above	100,000			
	To Balance	1,037,000			
		$1,162,000			$1,162,000
			June 30,	By balance	$1,037,000

I certify that the above is a true transcript from the Ledger and Journal of the East Tennessee & Georgia Railroad Company.

Knoxville, Tenn., September 10th, 1879.

O. H. P. ROGAN, *Auditor*,
E. Tenn., Va. & Ga. R. R. Co.

458

412 411 410 409

413 RESPONDENT'S EXHIBIT NO. 4.
W. H. D. L., Sp'l. Ex'r.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE.
Agency in New York.

June 10, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company, the following described three hundred and fifty (350) bonds of the State of
414 Tennessee, bearing interest at the rate of six per cent. per annum, in part payment of the debt which the State of Tennessee holds against said railroad company (description of bonds omitted), say three hundred and fifty (350) bonds of the State of Tennessee, as above described, for one thousand dollars each, making three hundred and fifty thousand dollars $350,000.

P. C. CALHOUN,
415 Pr't. agent of the Comptroller of the State of Tennessee, specially authorized for that purpose.

Rev. Stamp, 4 cents. Cancelled.

(Copy.) COMPTROLLER'S OFFICE,
Nashville, Tenn., Jan'y. 25, 1870.

By authority of an Act, passed Feb. 25, 1869, entitled "An Act to liquidate the State debt, contracted in aid of railroad companies in the State of
416 Tennessee," I hereby constitute and appoint the Fourth National Bank, of the City of New York, my agent to perform the duties of the comptroller of the Treasury of the State of Tennessee, as designated, and provided in and by Section 4 and 5 of the Act aforesaid.

G. W. BLACKBURN,
[SEAL.] *Compt.*

I hereby certify that the above is a true copy of the original document. 417

D. G. FANNING,
Notary Public.

(Copy.) COMPTROLLER'S OFFICE,
Nashville, Tenn., June 3, 1870.

P. C. CALHOUN, ESQ.,
New York,

Dear Sir:—I will be pleased to have you continue to act as my agent on the same terms and conditions as you have for my worthy predecessor. I will also wish to continue business with the Fourth National Bank. Will write you fully on to-morrow. 418

Yours very truly,

ED. R. PENNEBAKER,
[SEAL.] *Co'pt.*

I certify that the above is a true copy of the original letter. 419

D. G. FANNING,
Notary Public.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE.
Agency in New York.

Received June 10, 11 and 14, 1870, from the East Tennessee, Virginia & Georgia Railroad Company, in July, 1869, January and July, 1870, coupons of thirty dollars each of bonds of the State of Tennessee, delivered to me at these dates above mentioned, on account of and in part payment of the debt which the State of Tennessee holds against said railroad company, the sum of two hundred and eighty-two thousand seven hundred and fifty dollars ($282,750); say 3,834 coupons of July, 1870, 420

421 attached to bonds, and 5,591 coupons of July, 1869, and January, 1870, detached from bonds.

Rev. Stamp. P. C. C. June 14, '70. 5 cents.

P. C. CALHOUN, Prt. Agent
Comptroller of State of Tenn.

(Copy.) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSE,
422 Agency in New York,
June 14, 1870.

Received from the East Tennessee, Virginia & Georgia Railroad Company eight hundred and forty-two (842) bonds of the State of Tennessee for one thousand dollars each, bearing interest at the rate of six per cent. per annum; say eight hundred and forty-two thousand dollars, as per annexed schedule (schedule omitted), in part payment of the
423 debt which the State of Tennessee holds against said railroad company.

P. C. C. Rev. Stamp. June 14, '70. 5 cents.

P. C. CALHOUN, Prt. Agent,
Comptroller State of Tenn.

(Copy) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
424 Agency in New York.
June 11, 1870,

Received from the East Tennessee, Virginia & Georgia Railroad Company, Forty-three (43) bonds of the State of Tennessee, for one thousand dollars each, bearing interest at the rate of six per cent. per annum, say forty-three thousand dollars, as per annexed schedule (schedule omitted) in part pay-

ment of the debt which the State of Tennessee holds against said Railroad Company. 425

Rev. Stamp. P. C. C. June 11, 1870. 5 cents.

P. C. CALHOUN, Prt. Agent,
Comptroller of State of Tenn.

(Copy) COMPTROLLER'S OFFICE OF THE STATE OF TENNESSEE,
Agency in New York.
June 11, 1870.

426

Received from the East Tennessee, Virginia and Georgia Railroad Company, Twenty-six hundred (2600) bonds of the State of Tennessee for one thousand dollars each, bearing interest at the rate of six per cent. per annum, say twenty-six hundred thousand dollars, as per annexed schedule (schedule omitted), in part payment of the debt which the State of Tennessee holds against said Railroad Company.

Rev. Stamp. 5 cents. Cancelled.

427

P. C. CALHOUN, Pr't. Agent.
Comptroller of State of Tenn.

428

Deposition of Calvin Amory Stevens. 1

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., 2

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of Complainants in the above-entitled suit taken under 3 and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

NEW YORK, April 12, 1880.

Present.—Mr. E. L. ANDREWS, 4
For Compl'ts.
Mr. C. H. TWEED,
For Respd'ts.

5 CALVIN AMORY STEVENS, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct Examination by Mr. ANDREWS:

6 1 Q. Have you read that portion of James D. Porter's deposition taken at Paris, Tenn., March 9, 1880, in which he says:

"After the legislature had spent some days in wrangling, they were about to adjourn without doing anything as to the State debt, and I felt that I had done my duty and would let them go, but just at this time I received the telegram, Exhibit No. 2 to Calvin Amory Stevens' deposition, and upon the receipt of this telegram, I at once con-
7 vened the legislature and sent them a second message; that telegram alone induced me to convene the legislature and but for it I would not have convened them in the second extra session?"

A. I have.

2 Q. Will you please state the origin of that telegram?

A. In 1877 I first made the acquaintance of C. H. Bosher, a partner of R. T. Wilson; our acquaintance was but very slight, but knowing that he had
8 been an old acquaintance of my father, I relied upon him; on December 10, 1877, this note from C. H. Bosher which I made a part of my deposition, and offer in evidence (marked complainant's Exhibit No. 1, W. H. D. L., Spl. Exr.) was left at my office but not received by me on that day; on the evening of the same day I was surprised to receive at my house this telegram from C. H. Bosher, which I also

make a part of my deposition and offer in evidence, 9
(marked complainant's Exhibit No. 2, W. H. D. L., Spl. Exr.) on the following day Dec. 11, 1877, in response to his request I called on C. H. Bosher at the office of R. T. Wilson & Co.; C. H. Bosher immediately introduced me to R. T. Wilson, my first acquaintance with him; I was not posted about Tennessee affairs and Mr. Wilson undertook to inform me; he gave me as the latest advices from Nashville that it was impossible for the 60 and 6% bill to pass the legislature then in session there; 10
R. T. Wilson recommended that the bondholders offer to accept 50c. and 6% and have it definitely settled rather than that the Legislature should adjourn without any settlement. He gave me to understand that he like myself was a Tennessee bondholder, and that he was working in the interest of such. I did not then know that Messrs. Wilson & Bosher were interested in inducing the bondholders to give up lien bonds for those which would not carry liens. Indeed I had not then even read the 11
Tennessee statutes under which the bonds were issued and knew nothing of the so-called substitutions.

R. T. Wilson asked of me permission to write and send a telegram in my name. I allowed him to do so. R. T. Wilson himself wrote said telegram. After hastily reading what he had written, I was on the point of signing my own individual name when R. T. Wilson or C. H. Bosher suggested that the name of the estate would carry more weight, 12
and it was the same lot of bonds that my father had owned when living, I would be fully justified in signing the estate of Calvin Stevens, C. Amory Stevens, Trustee; after procuring my signature to said telegram, of which he was the author, he took charge of it, and as Bosher stated, on that day dispatched it to Tennessee.

13 3 Q. Were you then acquainted with J. B. Manning, A. Iselin & Co., and Inman Swann & Co., over whose names telegrams were sent from New York about the same time and which Governor Porter published in connection with R. T. Wilson's other telegrams as the basis of his call for the extra session?

A. I was not then acquainted with them, but I am now.

4 Q. Do you understand that those telegrams also
14 were prompted and sent by the railroad interest?

(Objected to as incompetent, immaterial, and irrelevant.

A. I certainly do; J. B. Manning is, was not a permanent investor in Tennessee bonds, but a broker who buys to-day and sells to-morrow; his telegram was solicited by the railroad interest and sent to oblige it; while Messrs. A. Iselin & Co., and Inman Swann & Co., like R. T. Wilson & Co., were
15 direct representatives of the railroad interest, being large owners of Tennessee railroad stock and so-called sustitution bonds.

5 Q. In a second deposition of James D. Porter, taken at Paris, Tenn., March 25, 1880, he says that you signed the petition of Feb. 15, 1877, addressed to the Governor of Tennessee; were you one of the petitioners who joined in that petition?

A. I was not.

6 Q. Was your father a holder of Tennessee bonds
16 at that time, and one of the petitioners who joined in that petition to Governor Porter?

A. He was; the petition was presented for his signature, and he being too ill at the time to sign personally, I signed it for him, as appears on its face, namely:

CALVIN STEVENS,
By C. AMORY STEVENS,
Atty.

7 Q. Will you produce a copy of the petition of 17
the Tennessee Bondholders filed in the Supreme Court of the U. S. ?

A. There is a copy which I offer in evidence. Copy petition marked Complainant's Exhibit No. 3, W. H. D. L., Spl. Exr.

8 Q. Is this a copy of a bill brought by you in the U. S. Circuit Court for the Eastern District of Tennessee ?

A. It is, and I offer it in evidence ; marked Complainant's Exhibit No. 4, W. H. D. L., Spl. Exr. 18

Respondent's counsel objects to the foregoing questions 7 and 8 as immaterial, incompetent and irrelevant and to the introduction of said exhibits in evidence.

Cross-examination by Mr. TWEED.

9 x Q. As I understand your testimony to-day, on the 11th of December, 1877, when you signed the telegram to Gov. Porter that has been referred to, you 19
did not know of the claims that Tennessee bondholders had a lien upon the roads to which they were issued which you have asserted in these suits ?

A. I did not ; my introduction to such business affairs did not begin until after my father's death, March 15, '77, when I took charge of the estate.

10 x Q. When and from what source did you first learn of this claim ?

A. After the Wilson telegram, Dec. 11, '77, when 20
I read the Tennessee Statutes, Davies' and Davis opinion and Humes & Porton's brief.

11 x Q. Did you do that before hearing read Mr. Wilson's letter to Mr. Terry, dated June 11, 1878 ?

A. It must have been about that time.

12 x Q. That was in or about June, 1878 ?

21 A. Yes.

13 x Q. On the 11th December, '77, were you the owner of any Tennessee bonds except those which you had received from your father's estate?

A. I was; of less than $20,000.

14 x Q. Whene had you procured those that you had at that time?

A. I should say I bought the first several years before. I could not fix the date without referring to my books.

22 15 x Q. Will you please refer to your books so that you can state the number that you bought, the time that you purchased them, and the amount that you paid for them, in respect of each of the Tennessee bonds which you owned on the 11th December, 1877, and which you did not receive from your father?

A. I have already given my books full and careful investigation in answer to that and similar questions asked me at previous examinations aiming to
23 throw all the light that I could on the question; I can do nothing better than I have done.

16 x Q. What books did you keep in and prior to 1877?

A. I kept no regular set of books.

17 x Q. What books did you keep containing a record of your purchases of bonds?

A. I would call it a private memorandum book, giving a brief statement of what real estate and bonds that I owned.

24 18 x Q. Where is that book now?

A. It is likely at 51 West Fifty-second street, which is my residence in New York.

19 x Q. If on the 11th December, 1877, you had any of the bonds which have been put in evidence by you in the cases in and for which you are now being examined, viz: the cases against the E. T., Va. & Ga. R. R. Co., the Cin., Cum. Gap & Charles-

ton R. R. Co., the Knoxville & Ky. R. R. Co. and 25
the Memphis & Charleston R. R. Co; would they not appear in that book?

A. They might, but not with sufficient accuracy to identify them; I think the chances are nine out of ten they would.

20 x Q. On the 11th December, 1877, outside of the bonds which you received from your father, did you have as many as $10,000 of Tennessee State bonds?

A. I should say somewheres thereabout, certainly 26
inside of $20,000, somewhere near $10,000.

21 x Q. Will you swear that you had as many as $5,000 outside the bonds you received from your father?

A. I do.

22 x Q. Do you know whether any of the bonds outside those you received from your father, were loaned by the State of Tennessee to any of the railroads proceeded against in any of your pending suits, and if so, which bonds and to which railroad? 27

A. My impression is that there were a few, but none of them have been proven in any of the cases which the present counsel for defendants represents.

23 x Q. Did you have the bonds of the State of Tennessee, which you received from your father, on the 11th December, 1877?

A. I could not answer whether I then had all of them or only a part.

24 x Q. Did you sell a portion at or about that 28
time?

A. I do not recollect whether I sold any during the year 1877, but my impression is I did during the year 1878.

25 x Q. When and how did you receive the bonds of the State of Tennessee, which you received from your father?

29 A. I should say within six months before his death, through a written instrument executed by him.

26 x Q. Where is that written instrument?

A. In this city.

27 x Q. Under your control?

A. It is.

28 x Q. Does it specify in or about the instrument the numbers of the bonds which were transferred to you by your father?

30 A. It does not—merely the aggregate amount.

29 x Q. Is there any record, and if so, where, of the numbers of the bonds which were transferred by your father to you?

A. H. T. Morgan & Co. had such record, and the bonds themselves were the best evidence of their numbers; H. T. Morgan & Co.'s record speaks for only such bonds as my father bought through their house, which I think include most of his purchases.

31 30 x Q. After you received the bonds did you make or have a list of their numbers?

A. I did.

31 x Q. Have you any list of them now?

A. I may have kept it though I am not certain; after it had enabled me to prove what bonds issued to railroads were among my present holdings my impression is that it went with other uncared for papers.

32 x Q. Do I understand you that you compared

32 this list with the lists of the numbers of bonds loaned by the State to different railroads?

A. You do.

33 x Q. Were any of those bonds bonds which you have proved in evidence in any of the cases which I have mentioned above as the cases in and for which this deposition is being taken?

A. They were not.

34 x Q. How many of them were bonds which were 33
loaned to railroads?

A. I could not answer how many, but very largely in the minority.

35 x Q. Were any of them bonds loaned to railroads?

A. They were.

36 x Q. As many as ten?

A. There might have been ten and there might not; most of them were "green" bonds.

37 x Q. What was the aggregate amount of the 34
Tennessee bonds received by you from your father?

A. I think it was $110,000.

38 x Q. When did you commence the earliest of the suits brought by you upon the ground that Tennessee bondholders were entitled to a lien upon the railroads to which the bonds were loaned?

A. I cannot give the exact date from memory; they were all in January, 1879, as I learn from my counsel.

39 x Q. How long before the beginning of that 35
suit did you instruct counsel to commence suits against the railroad companies upon that ground?

A. I could not answer that question definitely either; I should say within six months before the suits were commenced.

40 x Q. Between about June, 1878, when you learned of this claim to a lien and January, 1879, you were engaged in procuring Tennessee State bonds of the numbers which were issued to solvent railroads, were you not? 36

A. I bought such bonds issued to solvent and insolvent railroads.

41 x Q. Did you select out bonds issued to railroads, or did you undertake to make a distinction between bonds issued to solvent and bonds issued to insolvent railroads.

A. I bought both ways, solvent and insolvent together, and solvent and insolvent separately.

37 42 x Q. Did you undertake to retain those issued to solvent railroads and dispose of the others?

A. I bought both, and have retained both; I aimed principally to avoid bonds issued to turnpikes and bonds issued to railroads which did not carry liens; I also avoided graveyard bonds and bonds issued for State purposes.

43 x Q. The principle of selection was substantially then to retain bonds issued to railroads?

A. That was it, preferring bonds issued to main
38 trunk lines rather than feeders.

44 x Q. Were you present at, or did you know of the argument in the Supreme Court of the U. S. upon this or a similar question in or about June, 1878?

A. I was not present, but I knew of it and was very much surprised when I learned that our opponents had settled with the complainant in that suit thus preventing a decision in our case, the more so, because the defendants in that suit representing the
39 railroad interest had specially invited the Tennessee bondholders to enter that case, and have it adjudicated upon and definitely settled at that time.

(Respondent's counsel objects to all of the above answer after the words "I knew of it" as irresponsive.)

45 x Q. Did you have any personal knowledge of the invitation you have spoken of in the last an-
40 swer?

A. I was present when the invitation was extended by R. T. Wilson to the Tennessee bondholders, and certainly considered myself one of those invited.

46 x Q. By this invitation do you refer to the letter of R. T. Wilson to Terry dated June 11, 1878?

A. I refer to that letter which was publicly read

at a meeting held in R. T. Wilson's office at which numerous Tennessee bondholders were present.

47 x Q. You know of course in June, 1878, that the railroad companies resisted this claim to a lien?

A. I did.

48 x Q. While you were purchasing your bonds from June, '78 to January '79, you knew that they would resist the claims that you intended to make upon them?

A. I naturally supposed that they would resist them until they were forced to pay them.

49 x Q. Forced how?

A. By the law of the land.

50 x Q. Did you before commencing these suits ever present any coupons appertaining to any of these bonds to any railroad company and demand payment thereof?

A. I did not.

51 x Q. Please give me the maximum and minimum of the prices which you paid for bonds between June, '78 and January, '79?

A. I paid the Stock Exchange prices of those dates when they were bought promiscuously, but most of my bonds were bought off the Stock Exchange, buying only railroad lien bonds and paying several per cent. above the Stock Exchange prices for that privilege.

(Witness is requested to produce at the adjourned meeting to-morrow the memorandum book which has been referred to on this examination, and a list of his father's bonds, if it is still in existence.)

Adjourned to 13th, at 4 P. M.

April 13th, adjourned to 14th, 2 P. M.

45 NEW YORK, April 14, 1880.

Present—Counsel as before.

Cross-examination resumed:

52 x Q. Did you pay above the Stock Exchange prices for the the privilege of selecting bonds at any time prior to about June, 1878, when you learned of this claim to a lien?

A. I cannot say for a certainty, but I think not.

53 x Q. What percentage above the Stock Ex-
46 change prices did you pay between June, 1878, and the commencement of these suits, January, 1879, for the privilege of selecting bonds?

A. For the privilege of exchanging non-lien for lien bonds, I think that three per cent is the highest difference that I paid and from that as low as $\frac{1}{8}$ per cent. But for selected R. R. lien bonds which I bought directly off the Stock Exchange, I think that I paid as high as 5 per cent. above the current Stock Exchange quotation for "old" bonds, and
47 as high as 10 or 12 per cent above the Stock Exchange quotations for "new" bonds.

54 x Q. Do you mean to be understood as saying that you bought "new bonds" and paid for them 10 to 12 per cent. above the market price of such bonds?

A. I certainly do not mean any such thing, but I do mean that I paid for "old" R. R. lien bonds fully as much as 10 or 12 per cent. above the Stock Exchange quotation for "new" bonds.

48 55 x Q. At that time what was the difference in the market price at the Stock Exchange between "old" bonds generally and without regard to lien and "new" bonds generally and without regard to lien?

A. I do not recollect accurately but according to the Stock Exchange quotation between January and February, 1879, which defendants have put in evi-

dence, the extreme difference between the Stock Ex- 49
change sales of Tennessee "news" and "olds" was
17 per cent.

56 x Q. That difference between Tennessee "olds" and Tennessee "news" is the difference between the lowest price at which Tennessee "news" were sold during the month of February, 1879, and the highest price at which Tennessee "olds" were sold during that month, is it not?

A. It is; the difference for the month of January was not quite so great. 50

57 x Q. You do not wish to be understood as testifying that there was ever a time when the difference between these quotations of "old" and "new" bonds was as great as 17 per cent. on any particular day, do you?

A. I cannot answer that question, the Stock Exchange quotations will show.

58 x Q. When you made purchases of bonds on the Stock Exchange you paid the current price for them and received what bonds were delivered under 51
the purchase, did you not?

A. Such was the case whenever I bought bonds that way.

59 x Q. When you bought bonds off the Exchange, did you ever pay to the person from whom you bought them, and if so to whom more than five per cent. in excess of the then market price of that kind of bonds at the Exchange?

A. I should say not more than five per cent. above the Stock Exchange quotation for "old" bonds, 52
but fully 15 per cent. above the Stock Exchange quotations for "new" bonds.

60 x Q. Have you ever bought off the Stock Exchange "new" bonds and paid for them more than 5 per cent. above the market price at the Exchange for "new" bonds?

A. I never bought a "new" bond off the Stock

53 Exchange to the best of my recollection, and very few indeed at the Stock Exchange, and those long before the commencement of these suits if I ever bought any at all.

61 x Q. To whom and when did you ever pay as high as 5 per cent. for selecting bonds?

A. I have several times given the names of all the brokers through whom I ever bought any Tennessee bonds from whom counsel can obtain all the information he seeks if disposed to make sufficient
54 effort.

62 x Q. Can you give me the name of any broker or other person to whom you ever paid as much as 5 per cent. for the privilege of selecting bonds?

A. I did not testify that I ever paid as high as 5 per cent. for the privilege of exchanging bonds; as I recollect my testimony it was 3 per cent. as the highest that I thought I ever paid for exchanging bonds.

63 x Q. How low a premium did you pay for the
55 privilege of exchanging bonds?

A. One-eighth of one per cent. was the lowest.

64 x Q. Did you notify the persons from whom you received the bond that you were giving them an unsecured bond and receiving from them a secured bond as you thought?

A. I think, in fact I know that the brokers must have been aware of that fact for they offered them to me and that was inducement held out by them for me to pay the difference in exchange.

56 65 x Q. Did you yourself notify any of the persons with whom you exchanged such bonds of that claim?

A. I bought the bonds through brokers, not meeting with the original owners.

66 x Q. Did you notify the original owners or were they to your knowledge notified of that claim?

A. I certainly did not, for I certainly could not notify parties whom I never saw or knew even if it were the least incumbent on me to do so. 57

67 x Q. As I understand you what you did was to pay the brokers who held the bonds from $\frac{1}{8}$ per per cent to 3 per cent, to exchange unsecured bonds for those which you considered secured; is that correct?

A. I think it would be more correctly expressed by stating that brokers sought me and offered to sell and exchange such bonds on their own terms, either for account of their customers or themselves. 58

68 x Q. Did you never go yourself to a broker's office and propose such a transaction?

A. I certainly have frequently informed brokers that I was ready to buy or exchange such bonds, and as soon as they became aware of that fact they have shown themselves ready to notify me when they had such bonds for exchange or sale.

69 x Q. Can you name any broker from whom you have bought "Old" bonds, between the time when you first knew of this claim of lien in or about June, 1878, and the commencement of these suits, to whom you paid as much as five per cent. above the then market price of "Old" Tennessee bonds, for the privilege of receiving only what you considered secured bonds? 59

A. As I have before stated, my impression is that I paid as much difference as that, that was for one very large and select lot of bonds; the name of the broker through whom they were purchased has already been given by me, and is on the record. 60

70 x Q. What is the name of that broker?

A. Counsel for defendant can ascertain if he is disposed to see the different brokers through whom I bought bonds, and all of whose names I have given.

71 x Q. Do you decline to give the name of the broker from or through whom you bought this particular lot of bonds?

A. I do not decline for I have already given it.

61 72 x Q. Have you ever given it in your testimoy in this case except in conjunction with the names of all other brokers with whom you dealt?

A. I have not and do not propose to.

73 x Q. Cross question 70 repeated?

A. I have already put counsel for the defendants in the way to ascertain the information that he seeks I will not oblige him further.

(Counsel for defendants insists upon an
62 answer to this question, and proceeds with further cross-examination of witness without waiving his right to insist upon this question being answered).

74 x Q. At what time did you purchase this particular lot of bonds?

A. I should say within three months before the commencement of these suits.

75 x Q. At what price did you purchase them?

63 A. I decline to answer such an impertinent question.

76 x Q. Cross-question 75 repeated.

A. I would state that I shall decline to answer any and all questions which I regard as impertinent and unnecessarily inquiring into my private affairs.

(Counsel for defendants insists upon an answer to this question, and proceeds with further cross-examination of witness without
64 waiving his right to insist upon this question being answered).

77 x Q. Have you any book of account or memorandum book which contains any entry of the date and price of your purchase of this lot of bonds?

A. I certainly have.

78 x Q. Is it now in your control ? 65

A. It is.

79 x Q. Have you any such book with you here ?

A. I have not.

80 x Q. Where is it ?

A. At my house.

81 x Q. How is it designated ?

A. That is another question which I do not propose to answer.

82 x Q. Will you produce that book at the continuation of your examination to-morrow ? 66

A. I certainly will not produce that or any other book that unnecessarily makes public my private affairs.

83 x Q. Do you decline to produce that book before the Examiner after sealing up the other entries in the book except the entries relating to the purchase of this particular lot of bonds ?

A. I certainly do, although I would willingly do so were it not for the impertinence of the demand and the fact that R. T. Wilson, whom counsel for 67 defendants represents, positively refused to produce important books and papers that complainant demanded.

(Defendants' counsel objects to so much of the foregoing answer as follows: the words "I certainly do," as irresponsive.

Adjourned to 15th inst., at 2:30, P. M.

68

15th April, adjourned to 17th, 11 A. M.

69 NEW YORK, April 17th, 1880, 11 A. M.

Present—Counsel as before.

84 x Q. Can you now tell us what was the highest and what the lowest price which you paid for bonds between about June, '78, when you first knew of the claim of lien, and January, 1879, when the suits were commenced?

A. Not more definitely than I already have, without referring to my books, on which point I have
70 not posted myself since the last examination.

85 x Q. Have you no memoranda with you by reference to which you can give an accurate or approximate statement in regard to this matter?

A. I have not. From my recollection I should say that the highest price I paid for those with regular coupons on was 42½. But the highest price paid for any of the bonds given me by my father was 85⅝, while the highest price which I paid for bonds that I bought myself before my father's death
71 was 57.

(Respondents counsel objects to so much of the last answer as follows "42½.)"

86 x Q. What was the date at which you paid 57 for bonds purchased by you?

A. I will answer that question when counsel calls for the memorandum that he demanded at the examination on the 13th inst.

72 87 x Q. Have you here present the bill or account of the purchase of the bonds for which you paid 57?

A. I have, and in answer to the demand which counsel for defendants made for those and other memoranda at the adjourned examination of April 13th, 1880, would say that at the close of this deposition I will allow counsel for defendants to in-

spect them to his fullest satisfaction. Were it merely to oblige him individually I would willingly produce them during this present examination, but I cannot favor the defendants with any further pretext, either for obstructing and postponing the trial of these causes, or to add to their already imposing mass of irrelevant testimony by which they are seeking to encumber the record, and thereby hoping to confuse and bewilder justice, and certainly it is not in the least incumbent that I should give aught of favor to such notoriously bad characters as the Memphis and Charleston and other railroad companies of Tennessee which have so mercilessly wronged the Tennessee bondholders—corrupt and avaricious debtors that have enriched themselves at the loss of their unfortunate creditors—heartless corporations which in their selfish greed have done so much to ruin the credit and drag down to shame their very mother State to whom they owe their being. That it may not be said that I base my assertions merely on current rumor, I would specially call the attention of the Court to the public records of Tennessee, whose pages are black with proof of railroad corruption and sin. I take from those records but two specimens. I offer in evidence and make a part of this my deposition, copies of the testimony given by M. C. Galloway at Nashville, Tennessee, February 7, 1879, and also that of Rev. N. W. Motheral, given at Cleveland, Tennessee, February 10, 1879, both taken before the State Committee, appointed to investigate the State debt. 73 74 75 76

(Counsel for defendants objects to all the previous statement after the words "I have" as irresponsive, irrelevant and idle perversion of the requirement that the examiner shall reduce to writing all the statements of the

77 witness, and objects to the documents referred to by the witness as incompetent, immaterial and irrelevant, and as obviously not proper evidence in the cause, nor proper to be annexed to witness's deposition.)

(Copy Galloway's testimony offered in evidence, and marked Complainant's Exhibit No. W. H. D. L., Sp'l Ex'r.)

78 (Copy Motheral's testimony offered in evidence marked Compl't's Exhibit. No. W. H. D. L., Sp'l Ex'r.)

88 x Q. Will you now produce the bill or account of the purchase of the bonds for which you paid 57?

A. I certainly will not for the reasons already given.

89 x Q. What was the date of the purchase by your father of Tennessee bonds at 85⅝?

A. I decline to do that for the reason already
79 given.

90 x Q. What is your best recollection in regard to the lowest price at which you purchased bonds between June, 1878, and January, 1879.

A. I should say not lower than thirty.

91 x Q. You have spoken of bonds being bought by you between June, 1878, and January, 1879, with regular coupons on; state what coupons that included.

A. I mean all such coupons that up to that date
80 were due and unpaid. During the interval between June, 1878, and January, 1879, there were the six unpaid coupons previously falling due, besides those thereafter to accrue.

92 x Q. The prices which you have mentioned were prices for the bonds with their coupons on, were they not?

A. Certainly.

93 x Q. Do I understand you that in or about June, 1878, after hearing read Mr. Wilson's letter of June 11th, 1878, you procured and read a copy of Humes and Poston's brief in opposition to the claim of the Tennessee bondholders to a lien upon the railroads to which bonds were loaned by the State ? 81

A. Such was the case.

94 x Q. That brief contained a statement of the position of Railroad Companys in opposition to the claim—that the bondholders were entitled to a lien, did it not ? 82

A. Such is my recollection of the brief ; the brief itself is the best evidence of what it contained.

95 x Q. Was that the first knowledge that you had of the settlements which had been made by the Railroad Company's with the State, or had you not previously known generally about the facts in regard to such settlements or of some of them ?

A. That must have been about the time of my first knowledge of those facts, for I certainly did not know them at the date of the telegrams and letters 83 to Governor Porter, bearing my signature, all of which were written in December, 1877.

96 x Q. Between December, '77 and June, '78, had not these settlements been referred to in conversation with you either by Mr. Wilson or other persons concerned in Tennessee affairs ?

A. They certainly could not have been referred to in conversation with me prior to December 11th, '77, for I had never before during my life met with Mr. Wilson until that day ; nor by any other per- 84 son, for had I been aware of such facts I would not have allowed such telegram and letter to have been sent—between December 11th, '77 and June, '78 ; I have no recollection as to the specific date when I was first informed of it, at least more specifically than I have stated—I mean between December 11th, '77 and June, '78.

85 97 x Q. Then I understand you that it was between Dec. 11, '77, and June, '78, according to your best recollection, that you learned of these settlements?

A. Such is the case.

98 x Q. Were all the bonds which you have proved in the six cases which I have previously referred to bonds which were registered under the Act of 1873?

A. I so understand it.

86 99 x Q. Have you ever, prior or subsequent to the bringing of these suits, at any time requested or demanded of the Governor of Tennessee that he appoint a receiver to take charge of and operate the railroads involved in the cases above referred to, and out of the earnings of said railroads pay the coupons due on said bonds sued on herein?

A. I have not.

100 x Q. Have you ever, since your ownership of said bonds herein sued on made any legal effort to
87 require the Comptroller or Treasurer of Tennessee to apply the revenues of said State, collected by said State, to the payment of the past-due coupons on said bonds?

A. I have not.

101 x Q. Please examine original letters to the Governor of Tennessee, dated February 15, 1877, in which there is a proposition to the State of Tennessee to give up the State bonds held by those sending said letter and accepting in their stead new
88 bonds of the State of Tennessee to be thereafter issued bearing 3, 4, 5 and 6 per cent. interest, and whether the signature "Calvin Stevens, by C. Amory Stevens, Att'y," is or is not your signature, and whether said proposition was forwarded to the Governor of Tennessee with your consent?

A. Representing the bonds belonging to my father, I did sign that letter, but nearly all the

bonds there represented, and also represented by 88
me in subsequent telegrams and letters to the Governor of Tennessee, were plain State bonds unsecured by any railroad lien; I do not know if the letter went to the Governor, but presume it did.

102 x Q. By 50 and 6 in your telegram you meant that in exchange for the old bonds new bonds of the State should be given for 50 per cent. of the amount of old bonds and accrued interest, coupons of the new bonds to be made receivable for taxes, interest to be at 6 per cent. on the new bonds? 90

A. I understood that to be the meaning of the offer which R. T. Wilson made in a telegram sent over my name.

103 x Q. Did you not state to Mr. Wilson at or before the date of said dispatch, and on that day, that you were willing to take the 50 and 6, and that you would see others and ascertain whether they were not also willing to do so?

A. In my ignorance as to the true facts of the case I did give that assurance to Mr. Wilson and 91
fulfilled my promise.

104 x Q. The dispatch was read over to you before signing it, was it not?

A. It was either read over to me or else I read it over hastily myself, so hastily indeed that not until my recent examinations with Messrs. Fentress and Wright did I become aware of the evident misstatement that I was a signer of the former petition sent to Governor Porter through the committee of arbitration. I can find no evidence, and I certainly have 92
no recollection of having signed that petition.

105 x Q. After sending the telegram of December 11, 1877, and the letter of about the 15th December, '77, to Governor Porter, did you not go to Mr. Iselin's office and exhibit to the younger Mr. Iselin copies of the telegram and letter to show what you were doing in Tennessee matters?

93 A. In my ignorance, and while supposing that R. T. Wilson had fully posted me as to the true facts of the situation, I did have such an interview with Iselin and showed him what had been done.

NEW YORK, April 22, 1880.

Present—Counsel as before.

Re-direct Examination.

106 Q. Now that you have been assured by the
94 counsel for defendants that they do not seek to further postpone the trial of these causes, and that you have examined more fully than ever books and memoranda in reference to your Tennessee bonds, will you please answer all unanswered pertinent questions?

A. I will do so with pleasure.

107 Q. How many Tennessee bonds did your father register in 1873?

A. Eighty-four.

95 108 Q. How many did he fund?

A. Forty-two. I annex a copy taken from my father's cash book, under date of Sept. 5, 1873, showing the transaction.

(Copy annexed, marked Complt's Exhibit No. 7, W. H. D. L., Sp'l Ex.)

109 Q. Did he both buy and sell Tennessee bonds after 1873 and prior to his death?

A. He did.

96 110 Q. How many Tennessee bonds did he give you?

A. He gave me one hundred and ten—$110,000.

111 Q. How many of the $110,000 were "New Bonds?"

A. Sixty-five—$65,000.

112 Q. How many Old Bonds, 6%, color white, Letter B, did he give you?

A. Forty-four—$44,000, and one Old Bond, 5%, color white, No Letter $1,000. 97

113 Q. Please give the numbers of the forty-four Old Bonds, color white, Letter B?

A. The numbers are: 7829, 968, 7173, 3566, 7021, 7020, 11,567, 6643, 11,472, 2340, 8766, 9710, 1842, 11,400, 2109, 7839, 8709, 1807, 9551, 8424, 8718, 649, 4479, 1162, 8824, 8012, 1037, 8716, 9459, 9066, 897, 10,058, 263, 10,793, 1068, 10,060, 5,674, 7432, 4494, 1234, 11,744, 992, 717, 8717.

114 Q. Did you own any bonds prior to your father's death, and aside from those which he gave you? 98

A. I owned nine—$9,000, $5,000 of which I bought September 25, 1874, through John Buckley, Jr. at 57, Nos. 9867, 9889, 9868, 5421, 2714, color white, Letter B. January 7, 1875, I also bought through John Buckley, Jr., $1,000 at 55¾, No. 9461, color white, Letter B, and February 20, 1877, I bought through Hooper & DeWing, $3,000 at 43, Nos. 7422, 8307, 11,322, color white, Letter B. 99

115 Q. After your father's death, and before June, 1878, before you had read the Tennessee Statutes and had informed yourself as to the Tennessee Railroad Lien, and so called subscriptions, and before you had contemplated forcing the railroad companies to recognize their dishonored obligations, how many additional Old Tennessee Bonds, 6%, color white, Letter B, did you buy?

A. Between October 29, 1877, and March 30, 1878, I bought through H. T. Morgan & Co., thirty-two— 100 $32,000.

116 Q. Then I understand that the aggregate amount of old Tennessee 6% bonds, color white, letter B, which you bought individually before your father's death, together with what you received from him by gift before his death, and what you bought additional after March 15, 1877, before you contem-

101 plated suing the railroads, amounted to ninety-five ($95,000).

A. Such is the case.

117 Q. How many of those ninety-five bonds were Tennessee Railroad lien bonds?

A. I should say nearly all; at least fully nine-tenths. I find that my father gave me more railroad lien bonds than I had supposed.

118 Q. In your previous depositions you gave 85⅝ and 90 as the highest prices paid for Tennessee
102 bonds by your father. Were your impressions fully accurate?

A. I find that they were not quite so. His books show that during March, 1873, he paid 86½ for three different lots, the highest prices recorded among his purchases.

119 Q. Through whom did you purchase the lot of railroad lien bonds at 42½ referred to in your last deposition, and at what date?

A. Newton Deuel, Esq., on Nov. 25, 1878.

103 120 Q. Have you read the circular of the late "Agent for the State of Tennessee," S. Watson, Esq., published in 1868, in which, after narrating the condition and prospects of the various railroad companies of Tennessee in which the railroad lien bondholders were so vitally interested, he says: "The important question for the bondholders now is, What security have I for the payment of the principal and interest of my bond? The State debt proper is only about $4,000,000. The railroads and
104 all their rolling stock are mortgaged to the State to secure the payment of bonds loaned. This mortgage, as bondholders must know, inures to their benefit. For the payment of $29,000,000 of bonds, which will be the entire amount of bonds issued to the roads, including those that may be issued under the recent act of the Legislature, the bondholders have as security roads which, when completed,

will be nearly 2,000 miles in length, and which will have cost, and which will be worth, fully $70,000,000. In addition to that, they have the whole resources of the State solemnly pledged to them?" 105

(Objected to as incompetent, immaterial and irrelevant and a plain perversion of the duty required of the Examiner to take and return whatever testimony and Exhibits are presented to him.)

A. I have read that important document, an original copy of which I herewith offer in evidence, and make a part of this my deposition. 106

(Respondent's counsel objects to the document being received in evidence or annexed to the deposition as incompetent, immaterial and irrelevant, and not properly proven in the case.)

(Copy document offered in evidence; marked Complainants Exhibit No. 8, W. H. D. L., Spl. Exr.) 107

Re-cross-examination by Mr. TWEED:

121 x Q. What prices did you pay for the $32,000 in bonds purchased by you between October 29th, 1877 and March 30th, 1878, and what were the dates and amounts of the respective purchases?

A. As to the prices, speaking from memory, I should say that they were from 38 to 43; as to the dates: 108

$1,000	was bought	Oct.	29th,	1877,	at	43⅛
$1,000	" "	Nov.	3	"	at	43⅞
$10,000	" "	Dec.	12	"	at	43⅛
$3,000	" "	Jany.	30	1878,	at	39⅛
$10,000	" "	M'ch	22	"	at	39⅛
$2,000	" "	M'ch.	25	"	at	38⅞
$5,000	" "	M'ch.	30	"	at	39⅛

122 x Q. Of these bonds those purchased before January, '78, carried only four matured coupons, and those purchased after January, '78, carried at the time of purchase five matured coupons; whereas those you purchased between July, '78, and January, '79 carried six matured coupons.

A. Yes.

123 x Q. And the prices you paid between October, '77, and March, '78, when you did not know anything about the lien, ran from 38 to 43, whereas the prices for those carrying one or two more coupons which you purchased between July, '78, and January, '79, when you knew of the claim of lien, ran from 30 to 42½, did they not?

A. That is about correct I think, though I spoke from memory when I said I bought as low as 30. It is also true that I paid as high as 52½ for a few bonds carrying extra coupons bought before January, 1879.

124 x Q. How many bonds were those you paid 52½, and how many extra coupons did they bear?

A. Two bonds. I do not recollect the exact number of coupons: On reference I find there were 15 extra coupons.

125 x Q. What was the peculiarity about the lot of bonds for which you paid 42½?

A. They were all railroad lien bonds in contradistinction to bonds issued solely for State purposes, and which constitute the State debt proper.

126 x Q. Did those bear any extra coupons?

A. They did not.

127 x Q. How many were there in that lot?

A. $116,000.

128 x Q. Prior to July, 1878, had you sold any of the Tennessee bonds which you had yourself purchased, or had received from your father?

A. I had sold the entire 65 new bonds given me by my father.

129 x Q. When did you sell those? 113

A. $21,000 were sold May 16th, May 22d, July 25th, 1877; $44,000 were sold August 20th, August 21st and August 27th, 1877.

130 x Q. Prior to July, 1878, had you sold any part of the $95,000 of old Tennessee 6% bonds, color white, letter B, which you have referred to in your direct examination to-day?

A. On December 26, 1877, I find a record of sale at $20,000 of those bonds.

131 x Q. Have you ever sold any others of those 114
$95,000 of those bonds, except the $20,000 just referred to?

A. I know that I exchanged a few of them, but I cannot state positively if I sold any more of them, excepting No. 3,566, color white, letter B,—a graveyard bond which was too ghostly for me to keep.

132 x Q. Except the two bonds which you bought at 52½ and which carried fifteen extra coupons, and the particular lot of bonds which you bought at 42½; what was the highest price you paid for 115
bonds between June, 1878, and January, 1879?

A. I could not say positively, but I should say between forty and forty-five.

133 x Q. Have you not already stated that 42½ was the highest price which you paid, and that for a particular lot of bonds, for any bonds except those that carried an extra lot of coupons?

A. I have, speaking from memory.

CALVIN AMORY STEVENS. 116

134 x Q. Where did you first read the pamphlet, Exhibit No. 8?

A. As I recollect it, either that copy or the copy I first read was in this city, and came from James G. Kings Sons, bankers; I either borrowed it from that house and read it at home, or from Mr. Geddes, who had borrowed it of them.

117 135 x Q. When was that?

A. I should say, as nearly as I can recollect, on or about May 17, 1879.

136 x Q. Did you ever see any authorization from the State of Tennessee to S. Watson to act as its agent?

A. Only such authorization as the document itself shows by the signature "S. Watson, Agent for the State of Tennessee."

137 x Q. The signature then on the first page of
118 this paper, "S. Watson, Agent for the State of Tennessee" is then the only knowledge you have of his agency for the State?

A. Yes.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me this 22d day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

119 I, WILLIAM H. DE LANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annxed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit, and examined, and the deposition was
120 reduced to writing and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annexed, marked "Complainant's Exhibits No.'s 1, 2, 3, 4, 5, 6, 7 and 8, W. H. D. L., Spl. Exr.," were introduced in evidence in said cause during the taking of said deposition.

Dated April 22, 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

121

COMPLAINANT'S EXHIBIT No. 1.
W. H. D. L., Spl. Exr.

D'r Sir: Please call & see me at y'r earliest convenience.

C. H. BOSHER,
2 Ex. Court.

C. A. STEVENS. Dec. 10/77.

122

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COMPLAINANT'S EXHIBIT No. 2.
W. H. D. L., Spl. Exr.

Telegram.

MINING EXCHANGE, Dec. 10, 1877. 123

C. A. STEVENS,
32 West 32d street.

I am exceedingly anxious to see you to-day about Tennessee matters. Can you call here, or where can I see you.

CHARLES H. BOSHER,
2 Exchange Court.

124

125 COMPLAINANT'S EXHIBIT—NO 3,
W. H. D. L., S'p'l Ex.

SUPREME COURT OF THE UNITED STATES.

RODOLPH MERIAN, *et al.*,
Appellants,

126 *vs.*

WILLIAM B. DUNCAN, *et al.*,
Appellees.

PETITION OF COMMITTEE

OF

127 TENNESSEE BONDHOLDERS.

GEORGE HOADLEY
E. L. ANDREWS,
EDGAR M. JOHNSON.
Of Counsel.

128

RODOLPH MERIAN, *et al.*,
Appellants,

vs.

WILLIAM D. DUNCAN, *et al.*,
Appellees. 130

OCTOBER TERM, 1877.

No. 1037.

To the Honorable the Judge of the Supreme Court of the United States:

The petition of Eugene Kelly, Peter Geddes, R. S. Moran, John T. Terry and J. G. K. Duer, on their own behalf, and, as a committee, representing several millions of dollars in bonds of the State of Tennessee, more than of which have been already ascertained to be of the Internal Improvement Bonds of said State, respectfully shows to the Honorable, the Supreme Court of the United States. 131

That on the 11th February, 1852, the Legislature of Tennessee passed an act designed to aid in the development of internal improvements in said State by means of Railroads. By that act the State proposed to constitute certain of its own bonds about to be issued to specified railroad companies named in the act, the paramount liens on the property of the respective railroad companies to which they should be issued, and by such security to facilitate their sale and induce their purchase by investors and the public. 132

133 This object was carried into effect by providing in the act, authorizing the issue of the bonds, and in the section or that act operating as a statutory lien, as follows:

"So soon as the bonds of the state shall have been issued for the first section of the road they shall constitute a lien upon said section." And a like lien for subsequent sections was provided for in said act for the *payment* by said company of said
134 bonds, with interest thereon, as the same becomes due. The said act was, by tha 18th section thereof, declared to be deemed and taken "to be a public act as to all purposes of notice."

Thereafter, when the Mobile and Ohio Railroad Company, and other railroad companies, had accepted the terms and conditions of this statute, the Internal Improvement Bonds were issued to the said railroad companies.

135 Your petitioners show—

That the proceeds of the said bonds, authorized by the said acts to be issued with the aforesaid lien to secure the same on the face of the law authorizing their issue, were required by said statutes to be applied strictly to the construction of the respective roads to which the bonds were respectively issued.

The bonds were sold by the Mobile and Ohio Rail-
136 road Company and the other railroad corporations, to *bona fide* purchasers in the following:

Amounts.	Constituted Liens On	137
1,298,000	Mobile and Ohio Railroad,	
1,290,000	East Tennessee and Georgia Railroad.	
388,000	Hiawassee Railroad.	
1,461,000	East Tennessee and Virginia Railroad.	
68,000	Lagrange and Memphis Railroad.	
963,000	Memphis and Charleston Railroad.	
533,000	Tennessee and Alabama Railroad.	
423,000	Central Southern Railroad.	
1,335,000	Memphis and Ohio Railroad.	
126,000	Mississippi and Tennessee Railroad.	
404,000	McMinnville and Manchester Railroad.	138
434,000	Louisville and Nashville Railroad.	
566,000	Winchester and Alabama Railroad.	
956,000	Memphis, Clarksville and Louisville Railroad.	
191,000	Rogersville and Jefferson Railroad.	
774,000	Edgefield and Kentucky Railroad.	
709,000	Knoxville and Kentucky Railroad.	
457,000	Charleston Railroad.	
562,000	Mississippi Central Railroad.	
1,653,000	Nashville and Northwestern Railroad.	
157,000	Nashville and Chattanooga Railroad.	
211,000	Knoxville and Charleston Railroad.	
86,000	Tennessee and Pacific Railroad.	
96,000	Southern Railroad.	
48,000	Carolina Railroad.	
28,000	Evansville, Hudson and Nashville Railroad.	
76,000	Nashville and Decatur Railroad.	139
$15,044,000		

Of the said bonds so issued in aid of the construction of the Mobile and Ohio Railroad Company, these petitioners are the holders and representatives of bonds to the amount of $, and of bonds issued to the other roads above named, under the same statute, these petitioners are the owners and representatives of $ 140

Your petitioners show,

With the proceeds of the sales of the said Internal Improvement bonds, by the respective companies, their railroads in Tennessee were mainly completed by the purchase and laying of the rails thereon, and were equipped.

141 That for some years the interest on each issue of said bonds were provided by the respective railroad companies for whose benefit they were issued, according to the terms of the above Internal Improvement Act constituting said bonds liens on their respective roads to secure such payment.

That in the years 1869 and 1870, the General Assembly of Tennessee passed certain acts, under color of which efforts have been made to impair the
142 aforesaid lien of the Internal Improvement bonds, and in fact utterly to destroy the same, by the attempted transfer of the lien by the State of Tennessee for its own benefit.

That when said scheme became known, the holders of the Internal Improvement bonds of Tennessee were greatly alarmed at this attempted invasion of their security, and sought the advice of counsel in respect of the same. There was furnished to them
143 the opinion hereto attached, marked Exhibit "A." (Dunt's Opinion.) The subject of the unlawful attempt of the State of Tennessee was discussed frequently in the public prints, and on the various exchanges where the said securities were sold.

Your petitioners show,

That the Legislature of Tennessee undertook to empower the Mobile and Ohio Railroad Co. to issue a series of bonds to purport to be secured by the sta-
144 tutory lien belonging to your petitioners' bonds, and though your petitioner's bonds were still outstanding and unpaid, and even then in default as to interest.

When the said bonds were about to be issued under the name of Substitution Bonds, the bankers offering the same for sale in Geneva, London and

other financial centres, we are informed and believe, 145
were warned of the invalidity and injustice of their pretended claims to hold the liens conferred by statute on the outstanding bonds issued to build the roads. The sellers of the substitution bonds sought to sustain their position by legal advice, and obtained the opinion hereto attached, marked Exhibit "B." This opinion was attached to the prospectus for the sale of said bonds, and the purchasers thus became fully aware of the infirmity in their claims, sufficiently disclosed even in said opinion in favor 146
of their validity.

Your petitioners likewise show,

That they have very recently learned of the existence and pendency of this suit, and that it was brought by some of these substitution bondholders, and that they claim therein to enforce your petitioners' lien on the Mobile and Ohio Railroad in their own favor, and of which, by virtue of the original statutes, the Internal Improvement bond- 147
holders were made the owners and beneficiaries.

Your petitioners have also learned that the said cause has been set for hearing before this honorable court on April 22d, 1878.

Neither your petitioners, nor their trustee, nor any of the Internal Improvement bondholders, have been made parties to the said litigation, nor have they received notice of the same, except only as they learned of the same quite lately from the 148
newspapers.

Your petitioners show,

That on or about the 16th day of January, 1878, there was issued the following:

149 CALL FOR A MEETING OF TENNESSEE BONDHOLDERS.

Notice.

The holders of the State of Tennessee bonds are earnestly requested to meet at the office of John B. Manning, No. 14 Wall street, on Wednesday, January 16th, at 12 o'clock.

E. D. MORGAN & Co.,
BROWN BROTHERS & Co.,
EUGENE KELLY,
150 GEDDES & SMITH,
JAMES G. KING'S SONS,
A. H. POMEROY,
GEORGE W. STANTON,
C. AMORY STEVENS.

That in pursuance of said notice a public meeting of the holders of Internal Improvement bonds above described, and of like character therewith, was held in the City of New York, and at said meeting your
151 petitioners were selected as a committee to represent and further the interests of said bondholders; and your petitioners accepted the said appointment, and since said time have been diligently engaged in preparations for the enforcement of the rights of said bondholders.

Your petitioners show.

That in pursuance of the duties devolved on them as the committee aforesaid, they have published
152 notices of their proceedings and they maintain a registry of said bondholders in the city of New York, where they have received authority to represent them from a large proportion of holders of Tennessee Internal Improvement bonds, aggregating

And your petitioners are advised by counsel, and respectfully submit to the Supreme Court, that the

said substitution bonds, claiming to succeed to your 153
petitioners' lien, by virtue of an *assignment* by the State of Tennessee, are to be fully heard before this court in respect of their *claim* to own the said lien at the time above mentioned.

While the said claim of the substitution bonds has been contested by Rudolph Merian and others, holders of the sterling mortgage bonds of the Mobile and Ohio Railroad, your petitioners have not been afforded any opportunity to be directly represented before the Circuit Court, or the honorable 154
the Supreme Court.

Your petitioners represent that the holders of the Internal Improvement bonds are very numerous, and reside in various parts of Europe and the United States, and rely in great part on your petitioners for the protection of their rights.

And now your petitioners humbly seek for a hearing before this court, at least as *amici curiæ*, in a matter involving the determination of questions so 155
nearly affecting them, and in respect of which the formation of any opinions by the Supreme Court in the absence of the direct and efficient representation must seriously prejudice the future prosecution of their rights.

And your petitioners pray for leave to intervene herein, and that if need be the causes be remanded so that they may be made parties thereto:

And your petitioners pray for such other relief as 156
may be just in the premises.

EUGENE KELLY.
PETER GEDDES.
JOHN T. TERRY.
J. G. K. DUER.
R. S. MORAN.

GEORGE HOADLY,
E. L. ANDREWS,
EDGAR M. JOHNSON,
Solicitors and of Counsel for Petitioners.

165 UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT—EASTERN DISTRICT OF TENNESSEE.

(*In Equity.*)

To the Honorable, the Judges of the Circuit Court of the United States for the Sixth Judicial Cir-
166 cuit and Eastern District of Tennesse:

Your orator, CALVIN AMORY STEVENS, who is a citizen of the State of New York, brings this his bill of complaint against the East Tennessee, Virginia and Georgia Railroad Company, which is a citizen of the State of Tennessee, and is a corporation organized, existing and transacting business in said State, by virtue of and under Acts of its General Assembly.

167 And, thereupon, your orator complaining shows unto your Honors, that, on the 15th day of January, 1852, the General Assembly of the State of Tennessee passed an Act in the following language: "An Act to authorize the Governor of the State to issue Bonds of the State of Tennessee to the East Tennessee & Virginia Railroad Company."

SECTION 1. Be it enacted by the General Assembly of the State of Tennessee, That for the purpose of aiding the East Tennessee & Virginia Railroad
168 Company in the construction of bridges on their said railroad, the Governor of the State is hereby authorized and required to issue coupon bonds of the State of Tennessee, to said company, to an amount not exceeding the sum three hundred thousand dollars, bearing an interest of six per centum per annum payable semi-annually at such place as the president of said company may designate, which bonds

shall be payable in not less than thirty, nor more 169
than forty years after date, and at such place as said president may designate, but said bonds are to be issued as hereinafter provided.

SEC. 2. Be it enacted, That whenever it shall be made known to the Governor to his satisfaction by the president and directors of said company, that forty miles of said railroad have been put under contract and that the work on the same is progressing to completion, and that said company has 180
sufficient *bona fide* subscription to grade and put the necessary culverts on said section of forty miles ready for the iron rails, which subscription shall be adjudged solvent and valid by the Board of Internal Improvements, or any chief-engineer or other persons appointed to examine and report upon works of internal improvement, then it shall be the duty of the Governor to issue to said Company coupon bonds of the State of Tennessee, of the description aforesaid, to an amount not exceed- 171
ing one hundred thousand dollars, to be expended on the bridges necessary to be constructed on the said section of forty miles. And in like manner when a second section of forty miles shall have been put under contract, and the work thereon progressing, and said company has sufficient *bona fide* subscription to grade and put on the necessary culverts as aforesaid, ready for the iron rails, which subscription shall be adjudged solvent and valid by the Board of Internal Improvements, and all of 172
which facts shall be made known to the Governor, in the manner aforesaid to his satisfaction, then it shall be the duty of said Governor to issue to said company, coupon bonds of the State of Tennessee, of the description aforesaid, for an amount not exceeding one hundred thousand dollars, to be expended on the bridges necessary to be constructed

on said section of forty miles, and a like provision with like restrictions and conditions in all respects is hereby made for an additional section of forty miles of said railroad, the funds to be used in construction of the necessary bridges on said last-named section.

SEC. 3. Be it enacted, That so soon as the bonds are issued for the first section of forty miles, as provided in the first section of this Act, the said bonds shall, on the issuance thereof, constitute a lien upon all the stock of said company, upon the road-bed, masonry, bridges and other property of said company, and the State shall be invested with such lien on and by virtue of the issuance of said bonds, without a deed from the company for the payment of said bonds and interest accruing thereon; and whenever the bonds are issued for either or both of said sections of forty miles, as specified in the first section of this Act, the State of Tennessee shall on and by virtue of the issuance of said bonds be invested with a like lien or mortgage on said sections for the payment of said bonds and the interest thereon, including road-bed, masonry and bridges, on all of the said sections provided for in this Act, and on all of the stock of said company, without a deed from the company, and said lien or mortgage shall have priority over all other claims against said company, and all liens created by the company, after the issuance of the bonds for the first forty miles of said railroad, shall be void as to the liens of the State of Tennessee hereby created for the payment of the bonds issued under the provisions of this Act, and the accruing interest thereon, and the said liens of the State shall extend to and embrace the entire railroad, its superstructure and equipments after completed, and so continue until said bonds and interest thereon are paid

off and discharged, and without a deed from the 177
company.

SEC. 4. Be it further enacted, That the legislature of this State shall have power to enact any law or laws that may hereafter be deemed necessary to protect the interest or credit of the State against loss or damage on account of the issuance of said bonds, and to provide for the more speedy and certain payment by the company of said bond and interest, not impairing the vested 178
rights of the stockholders and that for that purpose and the purposes of notice of the existence of this Act, the same is hereby declared to be a public law.

SEC. 5. Be it further enacted, That before the Governor shall issue any bonds under the provisions of this Act, he shall require the engineer of said company to examine the premises where said bridge or bridges are to be built, and ascertain as near as he may be able, the 179
cost of construction of such bridge or bridges with good materials, and in a good and substantial manner, and report the same under oath to the Governor; and it shall not be lawful for said Governor to issue bonds as aforesaid, for a greater amount for the construction of such bridge or bridges than the sum specified in the report of said engineer, and the provisions of this Act, shall only extend to and include a bridge across the Watauga river, two
bridge across the Holston river, and a bridge across 180
Lick creek on the line of said road. And no bonds shall issue under this Act, unless upon the written affidavit of the President of said company, and a resolution of a majority of the directors thereof, and that said bonds when issued shall not be issued for any other purpose than procuring the means for the construction of said

bridge or bridges, and it shall not be lawful for said bonds to be used for any other purpose. Provided, the estimates of said engineer shall include the masonry on the line of said road. Provided, that the bonds of the State shall not be issued to build the bridges herein provided for, until there is stock subscribed by good and solvent individuals, corporations, companies or counties sufficient to grade the road and put the timbers on the same from Knoxville to the Virginia State line, which facts shall be certified to the Governor of the State by the written affidavit of the president and directors of the said road. And provided further, that the three hundred thousand dollars of bonds hereinbefore authorized to be issued to said company, may be included with the aggregate amount of stock subscribed by good and solvent individuals, corporations, companies or counties, and if the said sum of three hundred thousand dollars, together with said subscriptions of stock in said road, shall be sufficient to grade and build the bridges and masonry thereon, and otherwise prepare the said road for the iron rails, which facts shall be made to appear by the report of the chief engineer of said road on oath to the Governor, then it shall be the duty of the Governor to issue to the said company upon the application of the president and a majority of the directors of said company, the bonds of the State for three hundred thousand dollars, as provided in the first section of this Act, and the proceeds of said bonds shall be applied to the construction of the bridges specified in the fifth section of this Act, and the masonry on the line of the said road, and the surplus, if any, to any other bridges on the line of said road, or other purpose necessary to prepare the said road for the iron rails.

SEC. 6. Be it enacted, that it shall be the duty of 185
said company to deposit in the Bank of Tennessee, at Nashville, at least fifteen days before the interest becomes due, from time to time upon said bonds issued as aforesaid, an amount sufficient to pay said interest, including exchange and necessary commission, or satisfactory evidence that said interest has been paid or provided for, and if said company fail to deposit said interest as aforesaid, at the time aforesaid, or furnish the evidence aforesaid, it shall be the duty of the Comptroller to report that fact to 186
the Governor, and the Governor shall immediately appoint some suitable person or persons, at the expense of the company, to take possession and control of said railroad, and all assets thereof, and manage the same and receive the rents, issues, profits and dividends thereof, whose duty it shall be to give bonds and security to the State of Tennessee, in such penalty as the Governor may require for the faithful discharge of his or their duty as receiver or receivers, to receive said rents, issues, profits and 187
dividends, and pay over the same under the direction of the Governor towards the liquidation of such unpaid interest. And if said company fail or refuse to deliver up said road to the person or persons so appointed by the Governor, the said persons so appointed shall report that fact to the Governor, who shall forthwith issue his warrant, directed to the Sheriffs of counties, through which said road shall run, commanding them to take possession of said road, fixtures, equipments, and re- 188
ceive the same, and manage the entire road until a sufficient sum shall be realized, exclusive of the costs and expenses, incident to said proceedings to pay off and discharge the interest as aforesaid, due on said bonds, which being done, the receiver shall surrender said road and fixtures and equipments to said company. The Comptroller shall from time to

time, settle the accounts with the receiver, and the balances shall be deposited in the Treasury of this State. The Comptroller is authorized, and it is made his duty upon his warrant to draw from the Treasury any sum of money necessary to meet the interest on such bonds as may not be provided for by the company, as provided for in this Act, and the comptroller shall report thereof to the General Assembly from time to time.

SEC. 7. Be it enacted, That if said company shall fail or refuse to pay any of said bonds when they fall due, it shall be the duty of the Governor to notify the attorney general of the district in which is situated the place of business of said company of the fact, and thereupon, said attorney general shall forthwith file a bill against said company in the name of the State of Tennessee, in the Chancery or Circuit Court of the county in which is situated said place of business, setting forth the facts, and thereupon said Court shall make all such orders and decrees in said cause as may be deemed necessary by the Court to receive the payment of said bonds, with the interest thereon, and to indemnify the State of Tennessee against any loss on account of the issuance of said bonds by ordering the said railroad to be placed in the hands of a receiver ordering the sale of said road, and all the property and assets attached thereto, or belonging to said company, or in such other manner as the Court may deem best for the interest of the State.

SEC. 8. Be it enacted, That at the end of five years after the completion of said road, said company shall set apart one per centum per annum, upon the amount of bonds issued to the Company, and shall use the same in the purchase of bonds of the State of Tennessee, which bonds the company shall

pay into the treasury of the State, after as- 193
signing them to the Governor, and for which the Governor shall give said company a receipt, and as between the State and said company, the bonds so paid in shall be a credit upon the bonds issued to the company. And said bonds so paid in, and the interest accruing thereon, from time to time, shall be held and used by the State as a sinking fund for the payment of the bonds issued to the company, and should said company repurchase any of the bonds issued to it, under the provisions of this act, 194
they shall be credited as aforesaid and cancelled. And should said company fail to comply with the provisions of this section, it shall be proceeded against as provided in the sixth section of this act.

SEC. 9. Be it enacted, That in the event any of the said road, fixtures or property belonging to said road, shall be sold under the provisions of this act, it shall be the duty of the Governor to appoint an agent for the State, who shall attend said sale and 195
protect the interest of the State, and shall, if necessary to protect said interest, buy in said road or property in the name of the State, and in case said agent shall purchase said road for the State, the Governor shall appoint a receiver who shall take possession of said road and property, and use the same as provided for in the sixth section of this act, and said receiver shall settle with the comptroller semi-annually until the next meeting of the General Assembly.

196

Your orator further shows that on the 21st of February, 1852, the General Assembly of the State of Tennessee enacted the following statute entitled "An Act to authorize the renewal of certain bonds of the State of Tennessee."

Whereas, most of the bonds heretofore issued by the State of Tennessee, were issued without having

coupons attached thereto, which subjects the holders to great inconvenience and the State to great expense in the payment of the interest thereon. For remedy thereof:

SEC. 1. Be it enacted by the General Assembly of the State of Tennessee, that the Governor cause to be prepared a sufficient number of coupon bonds of the State of Tennessee of the denomination of $1,000 each, made payable to or order of similar language as nearly as practicable, and containing precisely the same obligations of the bonds which have been heretofore issued without coupons, except that the renewed bonds shall be made to fall due on the 1st day of January next succeeding the maturity of the old bonds, for which they are substituted, and that the coupons shall fall due on the 1st day of January and 1st of July of each year, and which said bond shall contain at their head, and on their face, in conspicuous letters, the words "Renewed Bonds."

SEC. 2. Be it enacted, That on application of any person holding any bond or bonds heretofore issued by the State without coupons, and desiring to exchange said bond or bonds for like amount in bonds prepared under the provisions of the first section of this act, then it shall be the duty of the Governor to sign the number of the renewed bonds applied for, and cause them to be countersigned by the Secretary of State, and the great seal of the State to be thereto affixed, and the coupon thereto to be filled up and signed by the Comptroller, and upon the surrender of the bond or bonds, so desired to be exchanged, the Governor shall issue and deliver to the person so applying an equal amount in the renewed bonds, prepared as aforesaid.

SEC. 3. B e it enacted, That the Governor shal 201
cause each of the old bonds thus surrendered to be cancelled and be filed away by the Secretary of State in his office.

SEC. 4. Be it enacted, That the Secretary of the State shall take and preserve a receipt from the person receiving a new bond, which shall contain the number, date and time of maturity of said bond, and also the number of the old bond in lieu of which it issued, and on each renewed bond he shall 202
cause to be entered the number of the old bond in lieu of which it was issued.

SEC. 5. Be it enacted, That upon the presentation of any old bond in exchange for a renewed bond, it shall be the duty of the Comptroller to compute the interest due upon said old bond up to the 1st of January, or 1st of July, as the case may be, immediately preceding the falling due of the first coupon on the renewed bond given in exchange for said old 203
bond, and to issue his warrant to the Treasurer for the payment of said interest, and that for all the services performed by the Secretary of the State, under the provisions of this act, he be allowed one dollar for each renewed bond so issued, and that the same sum be allowed the Comptroller for his services, to be paid by the person applying for said bond.

SEC. 6. Be it further enacted, That the person 204
receiving said renewed bonds shall also pay the expense of the engraving the same.

SEC. 7. Be it further enacted, That the different internal improvement companies to whom the bonds of the State may be lent under the different acts of the present Legislature, shall pay the expense of engraving and preparing the same.

205 SEC. 8. Be it enacted, That the Governor of the State shall cause to be engraved or printed, the bonds which may be issued under the acts of the present General Assembly as a loan to internal improvement companies, and the said bonds shall bear date on the first day of January, prior to their issuance, and the coupons thereto shall be payable on the first days of January and July of each year.

SEC. 9. Be it enacted, That the coupons shall be
206 signed and numbered by the Comptroller, and the bonds shall be countersigned, sealed and numbered by the Secretary of State, and upon delivering said bonds to the company authorized to receive the same, the Secretary of State shall take a receipt, reciting the number, date and amount of said bonds in a well-bound book to be deposited in his office, and the Comptroller and Secretary of State shall each be entitled to receive twenty-five cents for each bond so prepared, to be paid by the party
207 receiving said bonds.

SEC. 10. Be it enacted, That when it is proved to the satisfaction of the Comptroller of the State that coupons with interest, attached to State bonds, have been lost, and an affidavit to that effect has been or shall be made by the holder of the bond, and a bond of indemnity is executed to the State, the Comptroller is and shall be authorized to issue his warrant for the payment of the amount of the interest due, and for which the coupons issue, which
208 payment is to be made to the *bona fide* holders of the bond of the State.

Your orator shows, that the East Tennessee & Virginia Railroad Company was at the times aforesaid a body politic, chartered by the acts of the General Assembly of the State of Tennessee. The object and purpose of the creation of said corpora-

tion was the construction, completion and operation 209
of a line of railway for the transportation of passengers and freight to and from the cities of Bristol and Knoxville, in the State of Tennessee. For this purpose the said corporation was authorized to borrow money, and to impose liens upon its property to provide for and insure the payment of its liabilities.

Your orator refers to the several statutes of Tennessee concerning the said corporation, and prays further reference thereto at the hearing of this cause, so far as the same may be material. 210

Your orator shows, that in pursuance of the foregoing acts there was delivered to the East Tennessee & Virginia Railroad Company, Internal Improvement Bonds of the State of Tennessee, the same of the following description:

Color—White.

+ Letter B. +

Numbers—Number 1 to 300 inclusive.

A copy of one of said bonds and coupons is attached to this bill, marked "Exhibit A," and is prayed 211
to be taken as a part hereof. The other bonds and coupons of said issue are of like tenor, differing only in numbers and dates.

Your orator shows, that the said bonds to the amount of ($300,000) three hundred thousand dollars were received by or on behalf of the East Tennessee & Virginia Railroad Company, and were by the said company negotiated and sold to *bona fide* holders. At least one hundred of the said bonds being for the amount of one hundred thousand dol- 212
lars are now outstanding in the hands of *bona fide* holders. Your orator is the owner and holder of twenty of said bonds, each being for the sum of one thousand dollars. Your orator is likewise the owner and holder of nine coupons attached to each one of said bonds, the same representing the installments of interest for four and one half con-

213 secutive years, beginning with the installment that fell due on the 1st day of January, 1876, and including the installment that fell due on the 1st day of January, 1880, amounting in the aggregate to twenty-seven per cent. of the principal of each one of the aforeaid bonds.

Your orator shows, that the holders of said bonds are very numerous, and reside in foreign countries as well as in different parts of the United States. Their names are in great part unknown to your
214 orator, and they are, therefore, not made parties hereto. But this bill is filed on behalf of all holders of said bonds who may come in and contribute to the expenses of this litigation.

Your orator shows, that since the negotiation and sale of said bonds, the East Tennessee & Virginia Railroad Company was, in pursuance of law, consolidated with East Tennessee & Georgia Railroad Company, under the name and title of the East Tennessee, Virginia & Georgia Railroad Com-
215 pany. The latter corporation now owns, possesses and operates the aforesaid East Tennessee & Virginia Railroad.

And further complaining, your orator shows that the East Tennessee & Virginia Railroad Company, and its successor company, the defendant herein, have failed to comply with the provisions of the General Internal Improvement Law, above recited, for the payment of said installments of interest on your orator's bonds and on the bonds of other
216 holders in like situation, and the coupons of the bonds aforesaid are now in default and unpaid.

Your orator charges like defaults upon the coupons that have fallen due and have become payable by the East Tennessee & Virginia Railroad Company, according to the terms of the statute, on the first day of January, 1877, on the first day of July, 1877, on the first day of January, 1878, on the first

day of July, 1878, on the first day of January, 217
1879, on the first day of July, 1879, on the first day of January, 1880. The State of Tennessee is likewise in default on said coupons.

Your orator is entitled to the enforcement of the lien aforesaid, for the payment of interest on his bonds and those of other holders.

Your orator likewise shows that by virtue of his right in equity as a lien holder, and the terms of statutory mortgage above described, he is entitled to have the possession of the East Tennessee and 218
Virginia Railroad, in the State of Tennessee, secured by a receivership for the benefit of the holders of the Internal Improvement bonds aforesaid, issued to the East Tennessee & Virginia Railroad Company, and for the payment of the interest thereon. The Receiver or Receivers so to be appointed should apply the revenues of the property to the payment of the overdue interest on said bonds.

Your orator shows that during the aforesaid periods of default, the officials of the State of Ten- 219
nessee named in the sixth section of the said Act, have failed to take the action required thereby, and your orator is informed and believes that they claimed and claim to be bound by subsequent acts of the General Assembly of Tennessee, purporting to divest the liens and rights of the said bondholders. The present Comptroller of the State has been in office for several years, but has never made the report required by said Act. Your orator is also informed that the respondent claims that the afore- 220
said bondholders have no interest in the said statutory lien.

Your orator shows that he is remediless at law, and without the intervention of a Court of equity.

Wherefore, your orator prays that the priority of the said lien of the Internal Improvement bonds

221 and coupons aforesaid upon all the railroad, equipment, income, tolls, rights, privileges, property and franchises of said East Tennessee & Virginia Railroad Company within the State of Tennessee, may be established above all other claims and demands, as constituting the first and paramount incumbrance on said property and rights.

That the income of said property arising from its use in said State may be applied to the payment of interest accrued and to accrue upon the bonds
222 hereinbefore described, and as may appear by proofs before a Master to be still outstanding and unpaid. That the said property may be seized by order of this Court and placed in the hands of receivers, to be administered according to the said liens and trusts declared upon it, and to which it has been pledged and covenanted to be applied. That your orator may have such writs and orders of injunction *pendente lite* and thereafter as may be proper for the due enforcement of his rights.

223 And may it please your Honors to grant unto your orator such further or other and different relief in the premises as the nature of the case may require, and as may be consistent with equity and good conscience.

May it please your Honor to grant unto your orator writs of subpœna of the United States of America, to be directed to the said East Tennessee, Virginia & Georgia Railroad Company, and against all other persons interested in this matter and amen-
224 able to the jurisdiction of this Court, when discovered, thereby commanding them and every one of them, at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your Honors in this honorable Court, and then and there to answer all and singular the premises, and to stand to, perform and abide such or-

ders and decrees therein as to your Honors shall seem meet. 225

E. L. ANDREWS and
GEORGE HOADLY,
Solicitors and of Counsel for Complainant.

Exhibit "A."

UNITED STATES OF AMERICA.

M. No. 52. B. M 226

STATE OF TENNESSEE.

Know all men by these presents, That the State of Tennessee acknowledges to owe to or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons hereto attached. For the performance of 227 all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its session of 1851–2.

In witness whereof, I, W. B. CAMPBELL, Governor of said State, have hereunto signed my name, and caused the same to be countersigned by the Secretary of said State, and the 228 Great Seal of said State to be hereunto affixed at Nashville, this first day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RAMSEY,
Secretary of State.

$1,000. $1,000.

229 $30. $30.

THE TREASURER OF THE STATE OF TENNESSEE will pay the bearer thirty dollars, in the City of New York, on the 1st day of January, 1877, being the semi-annual interest then falling due on bond No. 52.

ARTH. B. CROZIER,
Comptroller.

$30. $30.

230

COMPLAINANTS EXHIBIT No. 5.
W. H. D. L.—Spl. Exr.

MOTHERAL.

Deposition of N. W. MOTHERAL, taken at Cleveland, Tennessee, on the 10th day of February, 1879, before a sub-committee of Investigation, composed of Senator Smith and Representative Driver.

231 Said witness being duly sworn, states:

Q. Please state your residence, your profession?

A. My residence is Cleveland, Tennessee. I am a minister of the gospel, of the Cumberland Presbyterian church.

Q. Did you know T. H. Calloway in his life-time, and did you hear a confession made by him before his death?

A. I knew him in his life-time, and he professed
232 religion under my ministry and joined my church, and expressed great dissatisfaction with his connection with the railroad, as president, stating that a man could not be a Christian and occupy his position, and declared his determination to resign his position. Mr. Calloway told of how he managed to get a certain bill through the legislature. I rather think it was the first Omnibus bill, but will not be

certain of that, it may have been the bill to turn 233
over the railroad stock to the Turnpike companies. He said he only liked one man to control it—he said he studied that man to find out his vices, and learned that it was women and whisky—he then employed a prostitute (Beckey Higgins I think was her name), to get him drunk on wine, and keep him at her house until the vote was taken the next day, which she did, and the bill was passed. He told me at another time, just before his death, and Joseph Calloway, his son, reiterated the same thing, 234
recently, that Major R. T. Wilson made a proposition in writing, to run down the stock of the road or water it and sell out to an English company, and thus cheat the stockholders out of their stock, which he said he rejected with indignation. Major Jackson did the same thing in a letter to Calloway. Mr. Calloway further told me that he had frequently employed David Nelson to assist him in getting his measure through the legislature, and that Nelson had applied to him for money, as pay for the same, 235
in a way that was offensive to said Calloway. I think he said he had given him a suit of clothes, and perhaps he had afterwards applied to him for money more than once, which made Calloway angry —as he was extorting it from him.

Q. Was Mr. Calloway in a state of sound mind when these statements were made, and up to his death?

A. Yes, sir; he was.

Q. Do you know anything of some letters touch- 236
ing these transactions, if so state all you may know about it?

A. Thos. Calloway, junior, came to me last Sunday night and told me that Mr. Jesse Gaut and Mr. Mayfield had telegraphed to him, as attorneys of the railroad, to come to Cleveland and get some letters touching those railroad propositions—saying

237 that they said his father's character was involved—and he asked my advice about the matter; I advised him to have nothing to do with it.

Q. Do you know anything of the disposition of those papers?

A. I do not. I understand that Mrs. Julia Calloway gave them to Samuel Reese, Depot Agent, and he turned them over to C. M. McGhee.

N. W. MOTHERAL.

238

COMPLAINANT'S EXHIBIT NO. 6.

W. H. D. L., Spl. Exr.

GALLOWAY.

The deposition of M. C. Galloway, taken before the committee at Nashville, Feb. 7th, 1879.

The said witness being sworn deposed as follows:

Q. What is your connection with the *Memphis*
239 *Appeal* newspaper? If so, how long have you been connected with it?

A. I am now one of the editors of that paper, and have been connected with it as editor since 1870.

Q. Were you interested in it as a stockholder or otherwise before 1870?

A. I was not.

Q. Do you own stock in it now or have you since 1870?

A. Yes sir, one-half interest now.

240 Q. Was Col. Dupree, now of Texas, connected with, and interested in, the paper, in 1872 or 1873, or along about that time?

A. He was a stockholder in 1872, I think we bought him out in 1873, paying him $14,000 for his interest.

Q. You remember the Funding Act of 1873?

A. Yes, sir.

Q. Was any proposition made to you or to your 241
associates in control of the paper, to give you or your firm the prospective profits on $50,000 of Tennessee bonds, realized from an expected rise in Tennessee bonds, under the Funding Act, to get the influence of your paper in advocating its passage?

A. Never, sir.

Q. Was any proposition of this kind, or any one of like nature, character or form, made to you or your associates to secure the influence of your paper in support of that Act? 242

A. There were propositions to this effect, which after correspondence and negotiations failed.

Q. Who made these or such like propositions?

A. They were made through Col. L. J. Dupree, to the *Appeal* Publishing Company, but I know not who made them.

Q. Did you have individual propositions made to you, in this regard?

A. I did not; I had an individual correspondence on the subject, which failed. 243

Q. Col., if you have no objections, will you please state with whom you had these individual negotiations, or this individual correspondence?

A. If I am not compelled I would like not to mention the man's name. It was a private letter and I dislike to expose privatecorrespondence; the letter I wrote to the gentleman or the letter received was accidently found at the Maxwell House, and I desire to say that personally I have no objection to its publication. 244

Q. Col., if you have no objection, will you please, without giving names if you so desire, state the amount or amounts that you understood, to be offered to the *Appeal* Company, or to you individually in reference to the Funding Act?

A. Never a dollar; I never heard of a Funding ring except through the *Memphis Avalanche*; that

paper published an article or articles reflecting upon the integrity of Gov. Brown, and it, after or about the time before Gov. Brown retired, upon his demand for an unqualified retraction of its article or articles, did so, and published an article highly complimentary to Gov. Brown. He went to Brownsville, and sent from there a letter, by an envoy extraordinary and this brought about the retraction and a complimentary editorial as to his integrity. Kellar wrote a letter disclaiming responsibility for the articles.

Q. The *Memphis Appeal* did support the Funding Act?

A. Yes, sir, it did, because Brown and his opponent during the canvass endorsed it, and Brown's triumphant election we regarded as making it the Democratic policy, and hence we supported it, and if times now were like they were then, we still think it would be the best policy for the party in the State.

Q. A receipt has been published or a copy of a receipt from you or the *Appeal* Company, to a certain railroad president or company, for a considerable sum of money; if you have no objection, please give the committee an explanation of it?

A. In reply to this question, I will say that pending the Gubernatorial canvass of 1870, the *Appeal* made a bitter onslaught on the bogus bonds of the State, especially the Mineral Home bonds, and the Brownlow administration. In this policy, we had three objects: the first was to save the tax-paying people from the taxes imposed to pay these bogus bonds. Second, to help elect Governor Brown, and third, to injure the Republican party. This bitter war, we continued during the Gubernatorial canvass in 1870, and in 1871, after Brown's election. In September, 1871, Maj. M. J. Wicks addressed a note to me, to meet him at his bank. In response

to his invitation I repaired to his bank; there I 249
found M. J. Wicks, President of the Memphis & Charleston Railroad, and Wm. B. Greenlaw, President of the Little Rock Railroad. Maj. Wicks took from his vest pocket an editorial in regard to the liabilities of the State, and asked me who was the writer of said editorial; I informed him that I wrote it. He said that that article was worth $50,000 to his road. The legislature had passed an Act allowing the railroads to retire their indebtedness, and then I got an insight into the whole thing. Maj. 250
Wicks and W. B. Greenlaw insisted that I continue the *Appeal* on the same line of policy, and as it made hundreds of thousands of dollars for them and the other roads, they would make it to my interest. Mr. Wicks voluntarily said he would give the *Appeal* $5,000 for every depreciation of five per cent. in the bonds. With this *stimulus* the *Appeal*, made a furious attack upon the bogus bonds, and continued to depress the bonds until the *Appeal* made $10,000 under Wick's voluntary contract with 251
it, and come within a quarter per cent. of making $15,000. When payment was demanded, Wicks requested me to appear before the Directors of the Memphis & Charleston Railroad, which I did. After I got there, we had nothing in a tangible shape to present to the Board, and Wicks made out an account embracing the services of the *Appeal* and its editors under the contract. Wicks paid the account after me agreeing to deduct $2,500.

Q. What about your enthusiastic support of Gov. 252
Brown?

A. That support was prompted by two reasons: first, I regard him as one of the best and ablest Governors Tennessee ever had; and second, is that I know him, in an experience of forty years with public men, to be one of the noblest men that ever lived.

M. C. GALLAWAY.

253 COMPLAINANT'S EXHIBIT, NO. 7.
W. H. D. L., Spl. Exr.

COPY FROM CASH BOOK OF CALVIN STEVENS, DECEASED.

1873.		
Sept. 5.	By Sec. State of Tenn. Registering 84 O. Bonds, . .	$84 00
"	By Sec. State of Tenn. Funding 42 New Bonds, .	42 00
"	By Travelling expenses to Tennessee, ...	74 00
		$200 00

COMPLAINANT'S EXHIBIT NO. 8.
W. H. D. L., Spl. Exr.

254

THE
CREDIT AND RESOURCES
OF THE
STATE OF TENNESSEE.

The following communication to the New York *Times*, written by the undersigned, is published in pamphlet form at the request of several former citizens of Tennessee now resident in New York. All the statistical facts given are derived from the official reports of the officers of the State.

S. WATSON,
255 *Agent for the State of Tennessee.*

TENNESSEE STATE CREDIT AND RESOURCES.

To the Editor of the New York Times:

A communication appeared in your paper of the 1st of January, from your correspondent in Nashville, signed "Philo," which does great injustice to the State of Tennessee, and requires some notice from the friends of the State.

The political part of your correspondent's letter I
256 have nothing to do with, excepting so far as it relates to emigration. "Philo" asserts that Northern men are driven away from Tennessee, and that there are not now in Tennessee one-half as many men of Northern birth as there were two years ago. That some Northern men in consequence of their disappointment in their business calculations, and some in consequence of hostility excited by their political course, have left the State may be true, but a very large number remain. They are scattered all over the State, and can be counted by thousands. The

writer of this knows that the rich iron regions below 257
Nashville, lying between the Cumberland and Tennessee River, is rapidly attracting emigration. Substantial men from the North have come there and invested their hundreds of thousands in iron property, and in iron works that have been idle during the war, and are now putting them into operation. It is also known to the writer that Northern emigration is setting in quite rapidly to the counties bordering on the Chattanooga Railroad and its branches. In three counties they have brought in with them 258
the past year capital largely exceeding $200,000. The Nashville press chronicles almost every week the arrival of parties to investigate the advantages and resources of Tennessee; notwithstanding the erroneous impressions of the State spread abroad by the political press and such correspondents as "Philo."

The bitterness of party feeling is very much softtening down in Tennesse. It is true that men who come into the State as blatant politicians, and who expect to live upon politics, do excite the enmity of 259
the political party against which they array themselves; but men who come into the State to cast their destinies with its people by accumulating wealth and developing the resources of the country, are cordially welcomed, everywhere and by everybody.

But the parts of your correspondent's letter which I wish especially to notice are his attacks upon the good faith of the State, and his efforts to ruin its credit by charging upon the State reckless extravagance in aiding railroads, most of which he deems 260
to be worthless.

"Philo" charges that the State refused, upon a technicality, to take the notes of the old State Bank. She refused to take them because she did not consider herself bound in honor and good faith to do so. An attempt was made by some of her citizens to force this depreciated currency upon her for taxes,

261 but the Supreme Court of the State, composed of men of the highest integrity and ability, unanimously decided that she was under no obligations to do so; and this decision has the sanction of the best legal minds in the State. The Bank of Tennessee is now being wound up. Its debtors can pay their debts in the notes of the bank. The policy of the State is to let as much of the circulation of the bank be redeemed in this way as possible, and after the debts are paid, if any notes remain unredeemed,
262 and if there should be even a moral obligation upon the State to redeem them, it will certainly do so. For in no State is the fidelity to obligations more deeply seated than in Tennessee. This has been proved by her past and will be proved by her future history. The word "repudiation" is an odious one to every Tennesseean. No political press and no demagogue of any political party has ever dared utter it to her people.

But the injurious charge, or insinuation rather, is
263 made by your correspondent, that the State has been guilty of reckless extravagance in aiding worthless railroads. That, in an appropriation of several millions of dollars, some roads should get aid that are not deserving, would of course be expected. But a detailed examination of railroads of Tennessee will show that there are but few if any roads of this character aided.

The Edgefield and Kentucky Railroad runs from Nashville to the Tennessee and Kentucky State line.
264 There it was expected to be united to the Henderson and Nashville Road, which runs from the point of junction through Hopkinsville and Madisonville to Hendersonville and Evansville on the Ohio River. The Kentucky Road, not having been completed before the war, and the Edgefield and Kentucky Road consequently ending in the woods, its interest has never been paid. But the Henderson and Nashville

is now in rapid progress. The road is graded from 265
the State line north to Hopkinsville, a distance of
about 25 miles, and the iron rails probably laid by
this time to that point. Much of the road is also
graded from the Ohio River south, and a good deal
of track laid.

The length of these two roads is 150 miles—fifty
miles in Tennessee and one hundred in Kentucky.
They run through the richest agricultural region in
the West. Seventy-five miles from Nashville they
strike an inexhaustible bed of rich bituminous coal. 266
There are three strata of this coal, one of them a lit-
tle over six feet in thickness, and the road runs just
below the lowest strata. At Evansville these roads
are united to the whole system of railroads in the
great Northwest, and will make almost an air line
communication with Chicago, and it is but a few
miles further to New York by this route than by the
Louisville and Nashville Road. The aid of $300,000
given to the Edgefield and Kentucky Road will se-
cure the immediate completion of the Kentucky end 267
of the road to the coal mines. Thus bringing these
rich mines to Nashville and the whole of Middle and
West Tennessee. Can there be a doubt that the
future coal trade alone over the Edgefield and Ken-
tucky Road will enable it to pay the interest on its
debt to the State?

The completion of the road referred to will also
greatly benefit the Memphis and Ohio, and the Mem-
phis, Clarksville and Louisville Road. These two
roads together form a line of road running from Mem- 268
phis through Clarksville in the direction of Bowling
Green, Kentucky, and intersecting the Nashville and
Henderson Road at the State line. One of them
passes through the rich iron region lying between
the Cumberland and Tennessee Rivers. The supply
of coal for Memphis, Clarksville, the iron works and
all intermediate points, must go over these roads,

thereby greatly advancing their future paying value. These roads have not heretofore, since the war, paid their interest. But so great is the confidence of the Louisville and Nashville Railroad Company in the future of these roads, that that Company, one of the wealthiest and most ably managed railroad corporations in the United States, has leased the Memphis and Ohio Road for ten years, and is now paying its interest on its debt, and has proposed to buy the Memphis, Clarksville and Louisville Road, offering to pay its floating debt, the back interest due the State, amounting now to $220,272, the whole of its debt to the State, and also to pay the stockholders a portion of their stock. Can any stronger evidence be given of the future paying value of these roads? The payment of their interest hereafter is certainly beyond a doubt.

One of the roads aided by the last act of the Legislature is the Nashville and Northwestern. This runs from Nashville to the Mississippi river, and has its terminus on that river, in the edge of Kentucky. On the opposite side of the Mississippi, it meets the Iron Mountain Railroad, which is being built from St. Louis down the western bank of that river. An appropriation has also been made to enable the Northwestern road to build a short branch, which will connect it with the roads leading to New Orleans and Memphis. The Nashville and Northwestern road has but very recently been completed to the Mississippi, and is unprovided with rolling stock, and of course could not be expected to pay its interest. The recent appropriations of the Legislature will fully equip it and build the branch referred to, and Nashville will then have by this road a very direct communication with St. Louis, the shortest and most direct communication with New Orleans, and almost an air-line route to Memphis. Ought not a road running part

of the way through a rich iron region, running 273
over the fertile soil of West Tennessee, and having
such connections, be relied on to pay at least its
interest on its debt to the State?

The Nashville and Decatur road is one of the roads aided. It crosses some very winding streams, and has an unusual number of bridges and a large amount of trestle work, all of which needs re-building. It is — miles long, and runs from Nashville to Decatur, Alabama. Means have been provided for its extension to Montgomery in Alabama. This, 274
when completed, will give Nashville almost an air-line communication over this road to Mobile and Pensacola on the Gulf of Mexico. This road has always paid its interest out of its profits, and will be still more certain to do so in the future.

The Nashville and Chattanooga road has always paid its interest and needs no aid. This road has two branches leading off from it—one, called the McMinnville and Manchester, starting about seventy-five miles from Nashville and running north- 275
wardly to McMinnville, thirty-four miles in length; the other, called the Winchester and Alabama road, starting about eighty-five miles from Nashville, running southwardly through Winchester to Fayetteville, thirty-eight miles in length. The rolling stock of these roads was run off, their depots and bridges destroyed, and all the iron rails on both roads removed elsewhere by the United States military authorities. The McMinnville and Manchester road has just been repaired, and the appropriation 276
to the Winchester and Alabama road has been made to enable it to complete its repairs. Both roads were run by the Chattanooga road before the war. The Southwestern road is to be a continuation of the McMinnville and Manchester road, north. The building of this road will be rendered unnecessary by the building of the Nashville and Pacific Railroad.

The Memphis and Little Rock Railroad, although out of the State, is really a Tennessee road, being built principally by Tennessee capital. This road was almost entirely destroyed by the war, and has been wholly unable to pay its interest. But it is being re-built, and contracts have been entered into for its entire completion. Can any intelligent man doubt that a road, running from the capital of the State of Arkansas to the principal commercial city of Tennessee, will pay its interest on its debt to the State when it is re-built?

The Memphis and Charleston Road, although badly crippled by the war, has promptly paid its interest, and so have the Mobile and Ohio, the Mississippi Central and the Mississippi and Tennessee roads.

The East Tennessee and Georgia and the East Tennessee and Virginia roads have always paid their interest promptly, and need no aid.

The Knoxville and Kentucky road has paid its interest. It runs from Knoxville through the rich coal fields of East Tennessee, and it is intended to meet at the Kentucky State line the Lebanon branch of the Louisville and Nashville Railroad. It is already completed thirty-two miles, has fifteen additional miles graded, and is supplied with rolling stock for its local traffic. The appropriation of $800,000 will certainly complete it to the State line. It has already penetrated the coal fields, and is supplying Knoxville with coal, and over this road will be transported the coal to supply Macon and Augusta, and other intermediate points in Georgia. It not only opens up the rich coal fields and iron mines of East Tennessee, but on its completion will give the fertile valleys of that section of the State access to the markets of the country, both North and South. Its coal trafic alone should pay the interest on its debt.

The Knoxville and Charleston road, "Philo" as- 281
serts, owe $615,000 and runs but one mile. This is wholly untrue. This road is nearly completed sixteen miles, and when finished that distance, and equipped, will owe the State only $325,000 in all. This road is to meet a road being built from Charleston, in a direct line to Knoxville.

The Cincinnati and Cumberland Gap Railroad is now running twenty-five miles, with its grading completed twenty miles further, at which point it meets at the North Carolina line a road now build- 282
ing from Asheville. These two latter roads, when completed, will give Knoxville and East Tennessee direct connection with the seaboard in the Southern Atlantic States, and thus render her system of railroads complete, and open up to the world her rich mineral resources, and bring the products of her rich valleys to the nearest and best markets, both North and South.

The Nashville and Pacific Railroad is another road that is to receive the aid of the State. But it 283
can receive no aid until its stockholders grade thirty miles of the road and have it ready for the iron. It then receives State aid to iron it, and upon every additional twenty miles being thus graded it is to receive the State aid to iron the twenty miles. The road is destined to run from Nashville to Knoxville, and will at some day run directly to Bristol on the Virginia and Tennessee State line, there meeting the railroads of Virginia that lead directly to Norfolk. Its completion, and this is rendered 284
certain, and the completion of the short branch of the Nashville and Northwestern Railroad before referred to, will furnish almost an air line of railroad from Norfolk in Virginia through Nashville and Memphis to Little Rock. No one can doubt that this in a few years will be extended to the Pacific, either to the Port of Guayamas, on the Gulf of

285 California, or to some point in the State of California. This route will run through the richest agricultural part of the United States, will be free from ice and snow, and the shortest route from the Atlantic to the Pacific. New York will yet see the day when her shortest and best highway to the Pacific Ocean will be through the State of Tennessee, and over her projected Nashville and Pacific road.

We have given the above detailed description of
286 the railroads in Tennessee, with her connections, so that every one may be enabled to judge of the importance of each road, and the perfection of her entire system. It must be obvious that there are very few of her roads, and those very short ones, that are not necessary to the development of her resources. When finished, Knoxville will be the centre of the system in the East, and her roads will connect her with all important points in the Union. Memphis has her system of roads leading to all parts
287 of the Mississippi Valley.

Nashville, the capital of the State, is the centre of the whole system, and her railroads, when completed, will give her close connection with all the cities of the Northwest, and make her the point through which the great highway from the Atlantic to the Pacific must pass. Has not Tennessee shown her wisdom in pledging herself to the support of such a system of roads?

At the close of the war almost all of the roads of
288 Tennessee were nearly in ruins. The State immediately came to their aid, and set them upon their feet again; and finding that additional aid was necessary to fully repair her roads and fully complete her system, she has by the recent act of her Legislature promised additional aid, that may reach the sum of about $4,000,000. But it must be years before this entire sum can be called for, a large por-

tion of this aid being dependent upon the prior 289
grading of the roads by the stockholders. The State has not acted hastily nor rashly in this legislation, but after full investigation of the claims of each road, and careful consideration of the importance of her entire system. The most enlightened of her tax payers believe her action to have been one of wise and judicious liberality, and so we believe those will think who are interested in her securities.

Prior to the war every road in Tennessee, except- 290
ing the Edgefield and Kentucky, and perhaps the Winchester and Alabama roads, paid the interest on he bonds loaned them. The receipts of all the main lines of railroads, and it is believed almost all the roads in Tennessee, are greater now than before the war.

The important question for the bondholder now is: What security have I for the payment of the principal and interest of my bond? The State debt proper is only about $4,000,000. The railroads 291
and all their rolling stock are mortgaged to the State to secure the payment of bonds loaned. This mortgage, as bondholders must know, inures to their benefit. For the payment of $29,000,000 of bonds, which will be the entire amount of bonds issued to the roads, including those that may be issued under the recent act of the Legislature, the bondholders have as security roads which, when completed, will be nearly 2,000 miles in length, and which will have cost and which will be worth fully $70,000,000. In 292
addition to that they have the whole resources of the State solemnly pledged to them. And what are the taxable resources of the State? On the 19th of December last there were due the State for taxes $1,108,900. As all the real and personal estate of the taxpayer is responsible for his taxes, a large proportion of the above amount must certainly be

paid. The present tax law, under which the taxes of 1868 will be levied, increases the tax fully fifty per cent. The receipts from all sources the past year, exclusive of interest paid by railroads, were $1,517,472. Add fifty per cent. to this will make $2,276,208. To this should also be added what may be collected from back taxes. The expenditures of the State last year, exclusive of interest, were $939,404. Of this amount at least $344,970 were extraordinary expenses, and will not be incurred this year. This would make the State expenditures this year $654,433, which, deducted from her tax receipts, $2,276,208, would leave $1,621,775, a surplus amply sufficient to make up all possible short-comings of railroads in paying their interest, and leaving also a very large amount to be appropriated to the aid of her common schools, a system which she is just inaugurating, combining the best features of the systems of the Northern States.

The pecuniary condition of the State of Tennessee and its resources are but little understood. Outside of East Tennessee, and aside from the destruction of her railroads, and the loss of her slave property, Tennessee was but little injured by the war. The Federal army got possession of Middle and West Tennessee early in 1862. Her citizens were enabled to get rid of all their Confederate currency without a sacrifice. It is true a large amount of her stock of animals were taken by the armies, but the armies, as a general rule, paid for what was taken. The army expenditures were larger in Tennessee than in any other State, and these expenditures enriched its citizens. The city of Nashville certainly came out of the war largely increased in population and greatly advanced in wealth. Everything was bought and sold for cash, consequently no debt was contracted at home or abroad, and as evidence of this we have no stop laws and no serious attempt to pass

any; and we appeal to the merchants of New York 297
as an evidence of the fact, that no merchants of any State pay more promptly than the merchants of Tennessee. Her black labor being formerly owned in small numbers, and many of them working side by side with their masters, labor is much less demoralized than in the more Southern States, as is demonstrated by the abundance of the present crop. Her crop of wheat the last year was fair, and farmers obtained for it from $2 to 2.50 per bushel, a price wholly unprecedented in Tennessee. Her corn crop 298
was a full one, and its surplus is now finding its way over the railways of New York to this city. Her crop of cotton has not been as large for years. Nashville has already received a larger number of bales than the average of entire years prior to this, and she will certainly receive an amount this year more than double her annual receipts before the war. Clarksville, about sixty miles below her on the Cumberland River, was one of the largest interior tobacco markets in the Union before the war; the past year 299
her receipts of tobacco in dollars and cents were greater than they have ever been at any former period.

In addition to her present productive wealth, she has vast resources yet untouched. She has valuable pine timber, larger forests of cedar than any State in the Union. She has scattered all over her every kind of timber used in building or the mechanic arts, except rosewood and mahogany. She has beneath her soil every variety of minerals used 300
in the mechanic arts, and all of it rich in quality and abundant in quantity, and she has a climate and soil capable of producing successfully every article of raw material used in manufacturing.

And yet with all these vast resources, with her sound pecuniary condition, her admirable system of railroads almost completed, and her mercantile and

301 financial honor untarnished, it is evident from the prices of her bonds, that fears exist that she will falter in paying the interest upon her debt. Why should Tennessee be distrusted? Before the close of the past year she placed her money with her fiscal agent in this city, amply sufficient to pay every dollar of her present January interest.

Did she not, at the close of the war, meet the wishes of her creditors, and fund all her accumulated interest?

302 With all her business interests disorganized by the war, with her labor in its transition state from slavery to freedom, with her railroads just rising from their ruins, with an imperfect tax system, she has heretofore faithfully met her obligations.

Why should it be feared that she will falter now, when her labor is annually producing a return greater in value than at any former period in her history? When emigration is daily bringing additional labor and capital to her borders. When her
303 railroads are almost rebuilt, and daily increasing their capacity to pay their dues to the State, and when her future receipts from taxation will annually exceed her ordinary expenses largely over $1,000,000. Surely a knowledge of the condition and resources of Tennessee, the known spirit and character of her people, the well-known unalterable determination of legislators and all her State officials to maintain her public faith inviolate, ought to satisfy every one that the interest on her public debt will ever
304 be promptly paid, and that all her obligations will be honorably and faithfully fulfilled.

S. W.

RAILROADS NOW PAYING AND THAT ALWAYS HAVE PAID THEIR INTEREST. 305

	Bonds loaned, including interest funded	Bonds endorsed by the State.
East Tennessee and Virginia	$2,688,100	$197,000
Memphis and Charleston	1,643,980	
Nashville and Decatur	2,115,176	
Nashville and Chattanooga	395,000	1,546,000
East Tennessee and Georgia	1,690,120	126,000
Knoxville and Kentucky	1,353,200	306
Memphis and Ohio	2,396,110	
Mobile and Ohio	1,684,800	
Mississippi and Tennessee	317,800	
Mississippi Central	1,078,980	
Knoxville and Charleston	300,000	
	$15,663,266	

ROADS NOT NOW PAYING, BUT WHICH WILL CERTAINLY PAY, AND PROBABLY BY THE END OF THE YEAR.

Edgfield and Kentucky	$1,070,167	307
Memphis, Clarksville and Louisville	1,894,600	
Nashville and Northwestern	3,064,850	
	$6,029,617	

ROADS NOT NOW PAYING

Cincin., Cumb. Gap and Charleston	$985,680	
McMinnville and Manchester	851,360	
Winchester and Alabama	1,098,259	
Rogersville and Jefferson	393,160	
Memphis and Little Rock	105,000	350,000
	$3,433,459	308

Deposition of C. Amory Stevens.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE. 1

CALVIN AMORY STEVENS *et al.* on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus

The MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.* 2

Hearing pursuant to notice to take the take the deposition of Calvin A. Stevens, before William H. DeLancey, Notary Public.

(Deposition taken subject to all legal objections of either party.)

It is consented and agreed that this deposition 3 shall be taken before William H. DeLancey, as a Special Examiner of the Circuit Court of the United States for the Western District of Tennessee, and that an order to that effect be entered at a future day *nunc pro tunc*, and that the said William H. DeLancey is also acting under and by virtue of Section 863 of the Revised Statutes of the United States.

52 BROADWAY, New York, Sept. 12, 1879.

Present { MR. ANDREWS, for Complainants. 4
{ MR. HUMES, for Defendants.

5 CALVIN A. STEVENS, a witness produced on the part of the compainants, being by me first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

Direct examination by MR. ANDREWS:

1 Q. Are you the complainant in this case?

A. I am.

2 Q. Are you an owner and holder of bonds of
6 the State of Tennessee?

A. I am.

3 Q. Will you produce before this officer for his inspection and that of counsel here present, Tennessee bonds of which you are owner and holder?

A. There are 28 of the bonds issued to and sold by the Memphis & Charleston R. R. Co.

Witness produces 28 bonds of the State of Tennessee.

7 Complainants' counsel requests the Commissioner to take copies of said 28 bonds, and certify in his report the production of the same; certificate annexed, and marked "Compl'ts Exhibit No. 1, W. H. D. L. Sp'l Ex'r."

4 Q. Are the holders of this class of bonds quite numerous, and do they reside in many different places?

A. Such is the case.

8 (Complainants' counsel closes his direct examination.)

Cross-examination by MR. HUMES:

5 x Q. How did you become the owner of the 28 bonds you have here produced?

A. I could not answer whether they were given to me by my father or whether I bought them myself.

6 x Q. When did your father give you any of these bonds? 9

A. Before his death.

7 x Q. When did he die?

A. I think it was March, 1877.

8 x Q. How long before his death did he give them to you?

A. It might have been a month or two weeks—not very long before his death.

9 x Q. Did he give them to you orally or by an instrument in writing? 10

A. He gave them to me by an instrument in writing.

10 x Q. What was that instrument in writing?

A. A proper instrument in writing, giving me these bonds as well as other securities.

11 x Q. Was it a Will, deed of gift, or simple assignment?

A. It was not a Will—it was a proper instrument in writing.

12 x Q. What do you mean by a proper instrument in writing? 11

A. I mean such a legally drawn instrument as fully transfers property from one person to another.

13 x Q. Was it signed by your father?

A. It was, otherwise it would not have been a proper instrument in writing.

14 x Q. Where is the instrument now?

A. It is securely under lock and key in this city.

15 x Q. Will you produce it during this examination? 12

A. I will with pleasure if the Court requires it.

16 x Q. Do I understand you to decline to produce it except upon an order of the Court?

A. An order of the Court or proper authority. I wish to further state that I am here to prove the ownership of my bonds, and not to answer impertinent questions unnecessarily inquiring into my pri-

13 vate affairs, enabling the defendants to further obstruct and postpone the trial of these causes.

17 x Q. Do you mean by other proper authority the direction of the examiner?

A. I will again state that I am here to prove the ownership of my bonds, and I again decline to answer impertinent questions prompted by a motive to retard and evade justice.

18 x Q. The question not being answered I repeat x Q. 17.

14 A. I decline to answer for the reasons already given.

Adjourned to 13th inst., at 10 A. M. by consent.

SEPT. 13, 1879. 10 A. M.

Adjourned to 4 P. M. this day by consent.
" " Sep. 29, 1879, 10 A. M. by consent.
" " Oct. 8, 1879, 10 A. M. "
" " Oct. 17, 1879, 10 A. M. "

15

NEW YORK, Oct 17, 1879.

Present—as before.

19 x Q. Will you produce the paper asked for on the former examination?

A. We will settle that at the next meeting.

Adjourned to October 22, 1879, at 12 M.

16 OCTOBER 22, 1879—12 M.

Present—Counsel as before.

20 x Q. Will you please produce the instrument in writing, which you have testified was signed and executed by your father a few weeks before his death, giving you his bonds of the State of Tennessee?

A. I object to producing the instrument referred 17
to, because it would make public the private affairs of an important estate confidentially intrusted to my keeping, but if the Court specially desires it I will waive my objection. I will go even further, if counsel for defendant desires to privately examine it, I will waive my objection, provided he will re-cipro-cate and fulfil reasonable conditions.

First. I ask that R. T. Wilson, allow my counsel to inspect his copy, letter and dispatch book, as to correspondence between himself, C. M. 18
McGhee, T. H. Callaway and Joseph A. Mabry, just before and during the Tennessee Legislature of 1869, when he was engaged in procuring the passage of the act of 1869, as stated in his letter to John T. Terry.

Second. That he allow my counsel to inspect his correspondence with his associates in 1870, when they were procuring the passage of the act for the sale of insolvent railroads, which he suggested and aided as stated in his letter to John T. Terry. 19

Third. That he allows my counsel to inspect his correspondence with his associates during the year 1868, when to depress the market value of Tennessee bonds, they procured a speculative injunction to prevent State payment of interest, for which conspiracy against the credit of the State Governor Brownlow, had R. T. Wilson C. M. McGhee and Joseph A. Mabry arrested.

Fourth, That he allow my counsel to inspect his correspondence with his brother, B. F. Wilson, 20
and C. M. McGhee, when he (R. T. Wilson) and Gov. Porter were getting up the extra session of the Tennessee Legislature to compromise the debt at 50 and 6 per cent.

Fifth, That R. T. Wilson, President of the Memphis & Charleston Railroad Company, give the names of his brokers in New York, through

21 whom he carried on his Tennessee bond speculation.

(Objected to by defendants' counsel as impertinent, irrelevant, incompetent, and not in answer to the question.)

21 x Q. Was the forgoing answer given on advice of counsel?

A. It was given on my own suggestion; I wrote it out myself.

22 22 x Q. Was it also given on advice of counsel?

A. I submitted it, counsel thought it proper, since R. T. Wilson refused again and again to produce evidence that counsel properly called for.

23 x Q. Did you sign the paper shown you dated February 15th, 1877, addressed to his Excellency, James D. Porter, and signed, among others, as follows:

"Calvin Stevens, by C. Amory Stevens, atty.,"

23 and a copy of which paper is attached as Respondent's Exhibt No. 1 to Peter Geddes' deposition in these causes?

A. I did sign it, at the solicitation I think of Mr. Peter Geddes.

24 x Q. Did you write and forward the letter now shown you, dated New York, December 15th, 1877, addressed to Governor James D. Porter, Nashville. Tennessee?

A. Soon after R. T. Wilson wrote and forwarded a certain dispatch to Governor Porter, to which

24 he secured from me the signature of my father's estate I wrote and forwarded the letter referred to, copy of which I offer from R. T. Wilson's copy book.

(The copy referred to is offered in evidence and marked Resp'ts Exhibit No. 1, W. H. D. L., Spl. Exr.)

25 x Q. What was the date of the telegram signed by you, and, as you say, sent by Wilson? 25

A. I should say a few days before, and I offer a copy of it taken from R. T. Wilson's dispatch book. It is the same telegram that to oblige R. T. Wilson I purposely signed the estate of Calvin Stevens, C. Amory Stevens, trustee. I was on the point of signing my own individual name, when I was urged by R. T. Wilson & Co. to sign the name of the estate, since it would carry more weight, and since it represented the same lot of bonds that my father 26 owned February 15th, 1877; these were the reasons given me by R. T. Wilson & Co.

(Copy referred to offered in evidence, and marked Resp'ts Exhibit No. 2, W. H. D. L., Spl. Exr.)

26 x Q. How old were you in December, 1877?

A. I was born August 2, 1845.

27 x Q. Were you the representative of Calvin 27 Stevens' estate when you signed the above telegram?

A. I was.

28 x Q. Didn't you also send a telegram on the 14th of December, 1877, to Governor Porter?

A. I think likely that I did. R. T. Wilson urged me to telegraph, and also to see my friends and get every one I could to telegraph.

29 x Q. Do you state that the telegram of the 14th of December was suggested or dictated by R. T. 28 Wilson, or written by him, or by anyone in his office?

A. I refer to the first telegram which he wrote and sent, and urged me to get others to telegraph and to use what influence I had to help them get through the 50 and 6 per cent. bill.

30 x Q. Who wrote and sentthe telegram of the

29 14th December, signed by you, to Governor Porter?

A. Please produce it that I may refresh my memory and tell all I know about it.

(Counsel says he has not got it.)

31 x Q. Did you write the letter of December 15th, 1877, as containing your views and sentiments, and do they contain your views and sentiments at that time?

30 A. I did write that letter, subject to R. T. Wilson's approval and sanction. R. T. Wilson was very careful to have the letter read to him before it was sent, and expressed himself as much pleased with it.

32 x Q. When did your father purchase the bonds he gave to you?

A. A number of years before his death.

33 x Q. Did he not purchase a large number of them during the years 1874, 1875, 1876 and 1877, up

31 to March?

A. I think he may have purchased some of them as recently as 1874, but my impression is they were purchased some time before.

34 x Q. Did he not make large purchases of bonds in 1875 and 1876 and in 1877?

A. I do not think he purchased any State of Tennessee bonds in the years 1875, 1876 or 1877. I think they were purchased long before that.

35 x Q. Were you on such terms with your father

32 in relation to his business for several years before his death, as to be informed of his transactions in bonds, and did he communicate with you on this subject?

A. I was quite familiar with my father's business affairs; we usually consulted together on all important business transactions when I was at home and with him.

36 x Q. Did your father fund the past due coupons, and bonds under the act of 1873, and if yea, did he do it in person, or by an agent? 33

A. I was not at home at the time, but I understand that he took his Tennessee bonds in person to Tennessee, had all of his bonds registered, cut off the past due coupons of the same and funded them into the new series of funding bonds.

37 x Q. Did you purchase and own Tennessee bonds yourself, before your father's death, if so in what years did you purchase them? 34

A. I purchased and owned Tennessee bonds a number of years before my father's death. I bought them at several different times, and I do not recollect the dates.

38 x Q. Did you fund the past due coupons under the act of 1873?

A. I never registered any Tennessee bonds or funded any Tennessee coupons.

39 x Q. Did you buy or hold any Tennessee bonds during the years 1873 or 1874? 35

A. I could not say for a certainty, but I am of the impression that I purchased some as recently as that.

40 x Q. Have you purchased any since 1874; if so during what years?

A. I have purchased a good many since. I think I must have purchased as late as 1876, 1877 and 1878.

41 x Q. Are the bonds proved and sued on in these cases bonds given to you by your father, or such as you have purchased since his death? 36

A. The bonds sued on in these cases include no bonds given me by my father; but bonds I purchased and paid for myself since 1874.

42 x Q. Were you aware that the railroad companies from 1870 to 1877, were purchasing State

bonds to retire their debts due to the State, under the provisions of the acts of 1869 and of 1870?

A. I was not. I first became aware of these so-called substitutions after the telegraph and letter to Governor Porter, of December 14th, 1877, had been sent.

43 x Q. Were you in the State of Tennessee during the years 1868, 1869 or 1870?

A. I could not say whether I travelled through the State in those years or not; that is without referring to my diary.

44 x Q. Were you at Nashville during the sessions of the Legislature in 1868, 1869 and 1870?

A. I have no recollection of ever visiting Nashville during my life.

45 x Q. Did you hold in 1873 any old Tennessee bonds with unpaid coupons attached to them?

A. I could not answer that question without referring to my books.

46 x Q. Did you ever present a coupon overdue to any railroad company, and demand payment of the same?

A. I have not as yet; I was on the point of doing so, and my counsel assured me that it was not necessary.

47 x Q. When was that?

A. That was since I filed these bills.

48 x Q. Did you ever do it before you filed these bills?

A. No, sir; I did not.

49 x Q. Have you a list of all the Tennessee bonds you now own; if yea, will you please file it?

A. I have a list; I decline to unnecessarily make public my private affairs; I have already submitted the necessary bonds to defendant's counsel.

50 x Q. Have you shown me any bonds except those that you say are sued on?

A. No, sir; I have not.

51 x Q. What agreements besides that contained 41
in the Exhibits to Terry's and Geddes' depositions, have you entered into with other persons for the prosecution of this suit?

A. Do you refer to the amount of fees I have paid to different counsel?

52 x Q. Question repeated.

A. If counsel for defendant will explain what he means, I will be pleased to answer his question.

53 x Q. I mean have you entered into any agree- 42
ment or agreements with any person or persons, besides those Exhibited with Terry's and Geddes' depositions, for the prosecution of these suits; whether these agreements have been made with your counsel, or with others?

A. I have not entered into any such agreement, though I regnlarly pay my counsel, and expect to as long as the fight continues.

54 x Q. Have you entered into an agreement with Peter Geddes and others other than that evi- 43
denced by Exhibits to Geddes' deposition, for the prosecution of these suits?

A. I have already answered to the effect that I have not, and that I regularly pay my counsel.

55 x Q. Have you entered into any agreement with any person or persons to share in the profits arising from these suits?

A. Counsel for defendants will please explain what he means by profits; I have already expended many thousand dollars myself without receiving any 44
profit; I am working to collect what honestly belongs to me, and to bring an infamous railroad ring to justice.

(Counsel for defendants objects to the last clause of this answer as impertinent, irrelevant, and not in answer to the interrogatory.)

56 x Q. Have you entered into any agreement

45 with any person or persons, whereby you are to get any part or share in the proceeds of the recovery of these suits, beyond the amount of your own bonds and coupons, held by you, before the bringing of these suits?

A. I have not.

57 x Q. Have you entered into any such agreement whereby others than yourself are to get a part of the proceeds of these suits, other than the bonds and coupons they held at the time of the bringing
46 of these suits?

A. I have not.

Cross examination closed.

Re-direct examination by Mr. ANDREWS:

58 Q. At the time you wrote the communications to the public officers of the State of Tennessee, referred to in the cross-examination, were you not very largely interested in non-lien bonds of the State of Tennessee?

A. I was.

47 CALVIN AMORY STEVENS.

Adjourned to Oct. 23d, 1879, at 11 o'clock A. M.

Oct. 23, 1879.

Adjourned till further notice.

Dec. 29.

Noticed for 31 Dec., 12 M.

Dec. 31.

Adjourned to January 2, 1880, 1 P. M.

Jan. 2, 1880.

CALVIN AMORY STEVENS.

Subscribed and sworn to before me this
48 2d day of January, A. D., 1880.

WILLIAM H. DELANCEY,

Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do

hereby certify, that on the several days named in 49
the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly sworn in the above-entitled suit, and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annexed, marked "Complainant's Exhibit No. 1, W. H. D. L., Spl. Exr.," and "Respondent's Exhibits Nos. 1 and 2, W. H. D. L., 50
Spl. Ex.," were introduced in evidence in said cause during the taking of said deposition.

Dated January 2, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

IN THE CASE OF

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 51

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.* 52

IN THE UNITED STATES CIRCUIT COURT

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of Calvin Amory Stevens in this cause twenty-eight Tennessee bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of

53 the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 1.

W.H.D.L., Spl. Exr.

M. UNITED STATES OF AMERICA. M.

No. 357. B.

54

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to

or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay, in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation

55 of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its Session of 1851-2.

In witness whereof, I, W. B. Campbell, Governor of said State, have hereunto signed my name, and caused the same to be countersigned by the

56 Secretary of said State, and the great seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RANNEY,
Secretary of State.

$1,000. $1,000. 57

The other twenty-seven of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 386, 409, 501, 562, 597, 608, 612, 663, 698, 708, 1,675, 1,700, 1,705, 2,021, 2,024, 2,053, 2,054, 2,066, 2,080, 2,082, 2,085, 3,098, 3,416, 3,509, 3,525, 4,552, 4,563.

All of said bonds are dated on the 1st day of January, 1852, except numbers 1,675, 1,700, 1,705, 58
2,021, 2,024, 2,053, 2,054, 2,066, 2,080, 2,082, 2,085, 3,098, which are dated January 1, 1855, and numbers 3,416, 3,509, 3,525, 4,552, 4,563, which are dated January 1, 1856.

Numbers 357, 386, 409, 501, 562, 597, 608, 612, 663, 698, 708 are signed: W. B. Campbell, Governor; W. B. A. Ranney, Secretary of State.

Numbers 1,675, 1,700, 1,705, 2,021, 2,024, 2,053, 59
2,054, 2,066, 2,080, 2,082, 2,085, 3,098, are signed: Andrew Johnson, Governor; W. B. A. Ranney, Secretary of State.

Numbers 3,416, 3,509, 3,525, 4,552, 4,563, are signed: Andrew Johnson, Governor; F. N. W. Burton, Secretary of State.

All of Said bonds having thirty-three coupons attached to each bond, except number 2,085, which has twenty-eight coupons attached. 60

The first coupon falling due is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer Thirty Dollars, in the City of New York,

61 on the first day of January, 1876, being the semi-annual interest then falling due on bond No. 357.

ARTH. R. CROZIER, Comptroller.

All the coupons attached to bonds numbered as aforesaid, are signed Arth. R. Crozier, Comptroller, except numbers 3,416, 3,509, 3,525, 4,552, 4,563, which are signed by J. C. Luttrell, Comptroller.

There are eight overdue coupons upon each of the aforenumbered bonds, except No. 2,085, the first
62 coupon thereof having fallen due on the 1st day of January, 1876. The other seven of said coupons fall due at intervals of six months from the date of the coupon above mentioned. On bond number 2,085 there are three overdue coupons, the first having fallen due on the first day of July, 1878, and the other two fell due at intervals of six months from that date.

All the aforesaid bonds, with the coupons attached thereto, were left by the witness, Calvin Amory
63 Stevens, for inspection by me, and the solicitor for the respondents, then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows:

On bond No. 357: "Registered under 9th section of the Funding Act, approved March 17, 1873; Jno. C. Burch, Comptroller; Chas. N. Gibbs, Secretary of State." Audited Aug. 14, 1874.

On bond No.	386	same	"	April 10, 1874.
64 "	409	"	"	May 20, 1874.
"	501	"	"	April 23, 1874.
"	562	"	"	Nov. 19, 1873.
"	597	"	"	April 10, 1874.
"	608	"	"	Nov. 20, 1873.
"	612	"	"	Nov. 28, 1873.
"	663	"	"	Nov. 2, 1874.
"	698	"	"	Aug. 14, "

On Bond No.	708	same	Audited	April 10,	1874.	65
"	1,675	"	"	Jan. 12,	"	
"	1,700	"	"	Jan. 15,	"	
"	1,705	"	"	Mar. 18,	"	
"	2,021	"	"	Nov. 2,	"	
"	2,024	"	"	June 6,	"	
"	2,053	"	"	April 10,	"	
"	2,054	"	"	"	"	
"	2,066	"	"	Mar. 6,	"	
"	2,080	"	"	Nov. 2,	"	
"	2,082	"	"	June 24,	"	66
"	2,085	"	"	June 2,	"	
"	3,098	"	"	Mar. 6,	"	
"	3,416	"	"	Jan. 6,	"	
"	3,509	"	"	May 1,	"	
"	3,525	"	"	June 9,	"	
"	4,552	"	"	Nov. 2,	"	
"	4,563	"	"	April 10,	"	

In addition to the foregoing, the following endorsements are upon bonds Nos. 608 and 612: 67

"State of Wisconsin—The within bond has been assigned to to the State Treasurer as banking security.—Bank Comptroller's office, June 2, 1857. Wm. M. Dennis, Comptroller."

MADISON, July 1, 1861.

Released without recourse in any event to
SAM'L D. HASTINGS,
State Treasurer, Wis.

Witness—Adolph J. Cramer. 68
O. G. Scofield.

STATE OF WISCONSIN }
County of Dane, } ss.:

On the 1st day of July, A. D. 1861, personally appeared before me the above-named Sam'l D. Hastings, Treasurer State of Wis., to me known,

69 and acknowledged the execution of the above release to be his free act and deed.

O. G. SCOFIELD,
Notary Pubilc,
Wis.

And on bond No. 357:

"Assigned and transferred by E. Cramer to the State Treasurer of the State of Wisconsin, in trust for the 'State Bank of Wisconsin.'"

70 Madison, April 14, 1853.

J. S. BAKER,
Bank Compt'r.

MADISON, Dec. 19, 1860.

"Released with recourse in any event to
SAM'L D. HASTINGS,
State Treasurer, Wis.

And on bond No. 501:

71 Assigned, &c., as above, and endorsed,
CHAS. J. KEELIN,
State Treasurer.
by CARL HARBICH,
Asst. State Treasurer.

WILLIAM H. DE LANCEY,
Special Examiner.

72

RESPONDENT'S EXHIBIT No. 1. 73

W. H. D. L., Spl. Exr.

NEW YORK, Dec. 15, '77.

GOV. JAS. D. PORTER, Nashville, Tenn.

Dear Sir:—I telegraphed you Dec. 11th, and again to-day. I feel it my duty to further say: That while I fully recognize and sympathise with the financial distress of Tenn., yet I cannot entirely disregard my own embarrassment and that of my fellow bondholders. 74

I represent one of the many estates which purchased Tenn. bonds at a time when her credit stood high, and none feared that she would do aught to lower it. We now offer liberally to share half of the loss. Speaking for one (and I believe that I express the sentiment of the majority) I cannot discount my just claim at better than 50 and 6 per cent. (fifty per cent. of old bonds and interest due changeable for new bonds bearing six per cent. interest) nor can I yet believe that the Legislature of 75 Tenn. will force her creditors (who have offered so liberally) to take less.

Allow me to call your attention to a fact of which you may not be aware. John T. McKinnon speaks for (if he has not already overstepped his instructions) a self-appointed syndicate. It is well-known that the syndicate own few, if any, of the bonds. They do not represent the bondholders. In fact the bondholders denounce their interference and mercenary motives. This self-constituted syndicate 76 does not seek only to improve and promote the best interests of the South. Its sympathy would seem to be quite as much with itself. With a subscribed capital of only ten thousand dollars, it aims to increase it by levying a regular broker's commission on the already over-burdened bondholders.

As a sovereign State your unfortunate creditors

77 appeal to you to act as becomes your dignified position—to deal directly with bondholders, to treat as discreditable impertinence, this interference of a self-appointed syndicate, that speaks without the authority of your creditors, and whose misrepresentations and mercenary motives they generally denounce.

Very respectfully,

THE ESTATE OF CALVIN STEVENS,

C. AMORY STEVENS, *Trustee.*

78 Care of

H. T. MORGAN & Co.,

35 William St., New York.

RESPONDENT'S EXHIBIT No. 2.

W. H. D. L., Spl. Exr.

December 11, 1877.

GOVERNOR JAS. D. PORTER, Nashville, Tennessee:

I am a large holder of Tennessee bonds, which have been held for years strictly for investment
79 account. I was a signer of the former petition sent you through the Committee of Arbitration, and while I would prefer to have that proposition accepted, yet if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose to take fifty cents on the dollar.

I think this dispatch represents the sentiment of
80 most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your Excellancy, to reciprocate this feeling, and make a settlement without further delay. Please submit this to the Legislature for its action.

The Estate of Calvin Stevens.

C. AMORY STEVENS, *Trustee.*

Deposition of George Arents.

CIRCUIT COURT OF THE UNITED STATES,

1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company,

vs.

THE MEMPHIS & CHARLESTON RAILCOMPANY *et al.*

2

Testimony and proofs for final hearing on the part of the complainants in the above entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, April 8, 1880.

Present.—Mr. E. L. ANDREWS,
For Compl't's,
Mr. C. H. TWEED,
For Respd't's.

4

GEORGE ARENTS, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify to the

5 truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by Mr. ANDREWS:

1 Q. Please state your name, age, residence and occupation?

A. George Arents; age 44; residence New York;
6 occupation broker.

2 Q. Have you been a purchaser of Tennessee bonds?

A. Yes, from 1866 to 1879.

3 Q. In purchasing Tennessee bonds, have you selected them according to their numbers?

A. Yes, sometimes.

4 Q. Have you selected the numbers in reference to their issue to particular Railroads?

A. Yes, at one time.

7 5 Q. How many bonds have you purchased in reference to their liens upon Railroads?

A. In this instance that I refer to about $100,000.

Cross-examination by Mr. TWEED:

6 x Q. When did you purchase these bonds you have spoken of?

A. I think in the year 1871-2.

7 x Q. Of whom did you purchase them?

A. We bought them of brokers at the board, in
8 the regular way, and when the bonds were delivered we selected certain numbers and sold others, as occasion arose.

8 x Q. The bonds that you bought you bought at the current market rates for Tennessee State bonds, at the time of purchase?

A. Yes.

9 x Q. Of course you did not at the time of

making those purchases stipulate for bonds of certain numbers, but you took the bonds that the sellers delivered under their contracts without regard to their numbers, dates or purposes for which they were issued?

A. When we bought "old bonds," we had to take "old bonds" that were a good delivery on the exchange of any numbers, and at any time when we bought "new bonds" we had to take new bonds of any numbers that were a good delivery. There were some five per cent. bonds that were not a good delivery unless specially dealt for.

10 x Q. Did or could you know anything about what the numbers of the bonds which you bought would be until they were delivered to you?

A. No.

11 x Q. When did you get the list of numbers by which you determined which bonds should be retained and which sold?

A. We got it from Nashville; I don't recollect whether from a broker or from a private party; it was a written list that purported to be a statement of all the bonds issued prior to the war, but it does not seem to be signed by anyone; it purported to contain the numbers and letters of the bonds issued before the war.

12 x Q. Did you tell any of the parties from whom you purchased bonds that you intended to make any such selection?

A. No, of course not.

13 x Q. After you had made the selection did you not sell the bonds that were left at the current market rates at the time for Tennessee State bonds?

A. Yes, sir, I did.

14 x Q. So that you got as much for the residuum as you would have got for any Tennessee State bonds?

A. Yes.

truth, the whole truth and nothing but the truth, deposes and says :

(Deposition taken subject to all legal objections of both parties.)

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1 Q. Please state your name, age, residence and occupation?

A. George Arents ; age 44 ; residence New York; occupation broker.

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A. No.

11 x Q. When did you get the list of numbers by which you determined which bonds should be retained and which sold?

A. We got it from Nashville; I don't recollect whether from a broker or from a private party; it 11
was a written list that purported to be a statement of all the bonds issued prior to the war, but it does not seem to be signed by anyone; it purported to contain the numbers and letters of the bonds issued before the war.

12 x Q. Did you tell any of the parties from whom you purchased bonds that you intended to make any such selection?

A. No, of course not.

13 x Q. After you had made the selection did you 12
not sell the bonds that were left at the current market rates at the time for Tennessee State bonds?

A. Yes, sir, I did.

14 x Q. So that you got as much for the residuum as you would have got for any Tennessee State bonds?

A. Yes.

13 15 x Q. What did you do with the bonds you culled out and selected?

A. We sold them out at the current market rates for Tennessee State bonds at the time they were sold, except in one instance where we made a trade with Norton, Slaughter & Co., because our coupons were short and the bonds would not be a good delivery unless we made the one coupon good.

16 x Q. So that the bonds which you selected you got no more for than you would have got for any
14 Tennessee State bonds at the time?

A. Yes that is so.

Re-direct by Mr. ANDREWS:

17 Q. Will you please attach to your deposition the schedule of numbers and description of bonds on which you relied in making purchases and selecting Tennessee bonds?

A. You have got that so mixed up that I cannot
15 answer it—when the bonds came in we would select certain numbers which we would hold, and dispose of the others as opportunity offered—I will give it to the Examiner to copy and attach.

(Copy annexed, marked Complts. Exhibit No. 1, W. H. D. L., Spl. Exr.)

Re-cross by Mr. TWEED:

18 x Q. Did you ever know of any other person than yourselves, who, at the time referred to, made
16 any such selection?

A. Not to my knowledge.

19 x Q. Did you ever know of the complainant, Calvin A. Stevens, selecting any bonds by their numbers, and if so, when?

A. I can't answer that in that way; I know that he has made an effort to do so, but whether he has done so I have no personal knowledge.

20 x Q. About when was it that he made the effort? 17

A. During the last year.

Re-direct by Mr. ANDREWS:

21 Q. Did you not say in answer to 18 x Q. that there might have been plenty of such purchases, but I did not know of it?

A. I don't know whether I did or not.

22 Q. For whom did you purchase the $100,000 of Tennessee State bonds referred to in your direct examination? 18

A. Isaac Sherman.

23 Q. Did you not have the schedule of bonds, referred to in your examination, in your custody or under your control, at the time you made those purchases, and did you not make those purchases with the intention of relying upon the schedule in selecting the bonds which you would hold?

A. Yes.

24 Q. May not those purchases have been made earlier than 1871? 19

A. I am not certain as to the date.

GEO. ARENTS.

Subscribed and sworn to before me, this 8th day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

20

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled action, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at

my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit, and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that the Exhibit hereto annexed marked Complts. Exhibit No. 1, W. H. D. L., Spl. Exr., was introduced in evidence in said cause during the taking of said deposition.

Dated April 8, 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

COMPLAINANT'S EXHIBIT No. 1.

W. H. D. L., Spl. Exr.

Statement of all the Bonds issued before the war, to whom and for what purpose issued, description and numbers of said bonds, and date of maturity.

Date of Receipt.	Railroads.	By whom Received.	Act authorizing Issue.	Nos. of Bonds.		De-scrip-tion.	When Bonds Mature.
Aug. 3, 1860	Cin., Cumb. Gap & Charleston.	N. E. Smith, Agent..	Mar. 22, 1860	11741 to 11800 and 1 to 66	132,000	1 to 66 Letter C	Jan. 1, 1898
" 25, 1858	Central Southern.....	Thomas Buford, Agent	Act of 1857-8.	7781 to 7908	128,000		" 1892
" "	" "	" " "	" "	7909 to 8079	171,000		" 1892
Mar. 15, 1859	" "	" " "	Elk River Bridge	8617 to 8629	13,000		" 1898
Sept. 9, 1859	" "	" " "	" "	9969 to 9981	13,000		" 1898
Jan. 18, 1860	" "	Thomas Martin, Prest.	" "	10602 to 10614	13,000		" 1898
May 9, 1860	" "	" " "	Dec. 3, 1859	11019 to 11194	176,000		" 1898
Jan. 9, 1861	" "	" " "	Elk River Bridge	1219 to 1238	20,000		" 1898
April 4, 1857	E. & Ky. and L. & N. R. R.	E. S. Cheatham.....	Dec. 15, 1855	5283 to 5302	20,000		" 1892
June 24, 1857	" " " ..	" "	" "	5453 to 5472	20,000		" 1892
Aug. 13, 1857	" " " ..	" "	" "	5473 to 5492	20,000		" 1892
Oct. 17, 1857	" " " ..	" "	" "	5863 to 5902	40,000		" 1892
Mar. 10, 1858	" " " ..	" "	Dec. 1, "	6088 to 6099 7000 to 7027	40,000		" 1892
Sept. 29, 1858	" " " ..	" "	Cumberland River Bdg	8155 to 8174	20,000		" 1898
Dec. 28, 1858	" " " ..	" "	" "	8305 to 8324	20,000		" 1898
Oct. 6, 1859	" " " ..	" "	" "	10091 to 10110	20,000		" 1898
Jan. 21, 1860	" " " ..	Jno. L. Helm, Agent	" "	10628 to 10638	11,000		" 1898
Sept. 7, 1850	East Tenn. & Ga. R. R.....	J. G. M. Ramsey.....	Jan. 30, 1850	1 to 150	150,000		" 1898
Mar. 3, 1851	" "	" "	" "	151 to 250	100,000		

32			31			30			29		
May 26, 1851	East Tenn. & Ga. R. R.		J. G. M. Ramsey	Jan. 30, 1850		251 to 350	100,000				
April 10, 1854	" "		C. Wallace, Prest.	Feb. 4. 1852		876 to 895	20,000		Jan.	1, 1892	
June 22, 1854	" "		C. Wallace	" 26, 1852		896 to 915	20,000		"	1, 1892	
July 30, 1853	" "		Thos. H. Calloway	" 26, 1852		726 to 745	20,000		"	1, 1892	
Sept. 7, 1853	" "		C. Wallace	" 11, 1852		746 to 875	130,000		"	1, 1892	
Nov. 8, 1854	" "		" "	" 11, 1852		1216 to 1505	290,000		"	1, 1892	
Mar. 27, 1855	" "		A. N. Crozier, Agt	" 26, 1852		1975 to 2014	40,000		"	1, 1892	
May 31, 1858	" "		Thos. J. Campbell, Agt	" 11, 1852		6681 to 6780	100,000		"	1, 1892	
Mar. 11, 1859	" "		R. C. Jackson, Agt.	" 11, 1852		8517 to 8616	100,000		"	1, 1898	
Sept. 9, 1859	" "		C. Wallace, Prest	" 11, 1852		9982 to 10073	92,000		"	1, 1898	
June 11, 1858	Edgefield & Kentucky		E. S. Cheatham, Prest.	"		7231 to 7430	300,000		"	1, 1892	
Feb. 12, 1859	" "		" "	"	Bridge Aid	8491 to 8516	26,000		"	1, 1898	
Aug. 30, 1859	" "		" "	"	" "	9852 to 9861	10,000		"	1, 1898	
Sept. 30, 1859	" "		" "	"	" "	10074 to 10090	17,000		"	1, 1898	
May 24, 1859	" "		" "	"	Feb. 11, 1852	8780 to 8959	180,000		"	1, 1898	
June 9, 1859	" "		" "	"	Bridge Aid	8960 to 8975	16,000		"	1, 1898	
Jan. 23, 1860	" "		" "	"	" "	10641 to 10691	51,000		"	1, 1898	
April 16, 1860	" "		" "	"	March 22, 1860	10794 to 10838	45,000		"	1, 1898	
July 27, 1852	East Tenn. & Virginia		S. D. Mitchell, Agt.	Jan. 15, 1852		1 to 10	10,000	Letter B	"	1, 1892	
Aug. 9, 1852	" "		" "	" 15, 1852		11 to 300	290,000	" "	"	1, 1892	
Jan. 29, 1855	" "		S. B. Cunningham	Feb. 11, 1852		1706 to 1974	269,000		"	1, 1892	
Nov. 7, 1855	" "		" "	"		2993 to 3092	100,000		"	1, 1892	
Jan. 17, 1856	" "		" "	Jan. 15, 1852		3133 to 3232	100,000	Letter B	"	1, 1892	
July 15, 1856	" "		" "	Feb. 11, 1852		4272 to 4391	120,000		"	1, 1892	
Nov. 18, 1856	" "		" "	" 1852		4841 to 4895	55,000		"	1, 1892	
Mar. 3, 1857	" "		" "	" 8, 1854		5048 to 5242	195,000		"	1, 1892	
June 8, 1857	" "		" "	" 8, 1854		5303 to 5452	150,000		"	1, 1892	
Oct. 12, 1857	" "		" "	" 8, 1854		5793 to 5862	70,000		"	1, 1892	
Feb. 4, 1858	" "		" "	" 8, 1854		5988 to 6087	100,000		"	1, 1892	
April 7, 1858	" "		" "	"		6120 to 6219	100,000		"	1, 1892	
June 10, 1858	" "		" "			7088 to 7130	43,000		"	1, 1892	

May 7, 1860	Knoxville & Kentucky.....	Jas. A. Mabry, Prest..	Mar. 22, 1860
Nov. 17, 1860	" "	" " "	Feb. 11, 1852
April 30, 1858	Louisville & Nashville.....	Jno. L. Helm, Prest..	Act of 1853-4
" 30, 1858	" "	" " "	" "
July 5, 1859	" "	" " "	Feb. 11, 1852
April 20, 1861	" "	James Guthrie, Prest..	Dec. 3, 1859
July 24, 1855	Miss. & Tenn.....	F. M. White, Prest...	Act of 1852-3
May 22, 1856	Miss. Central & Tenn.....	Milton Brown, Prest..	Feb. 11, 1852
Nov. 15, 1856	" ,, ...	" " "	" 11, 1852
Aug. 28, 1857	" ,, ...	" " "	" 11, 1852
June 17, 1856	Mobile & Ohio.....	A. F. Hopkins, Prest.	" 24, 1856
" 17, 1856	" "	" " "	" 8, 1854
Dec. 12, 1856	" "	" " "	" 8, 1854
Aug. 28, 1857	" "	Milton Brown, Prest..	Act of 1853-4
Nov. 14, 1857	" "	" " " ..	Feb. 21, 1856
Oct. 11, 1859	" "	" " " ..	" 11, 1852
July 10, 1860	" "	" " " ..	" 11, 1852
Sept. 17, 1860	" "	" " " ..	" 11, 1852
June 11, 1861	" "	" " " ..	" 11, 1852
Oct. 4, 1852	Memphis & Charleston.....	Arch. E. Mills, Prest.	" 11, 1852
Jan. 3, 1853	" "	" " " .	" 11, 1852
Nov. 28, 1854	" "	Sam Tate..... .	" 11, 1852
May 22, 1855	" "	"	" 8, 1854
" 22, 1855	" "	"	" 8, 1854
Nov. 28, 1855	" "	"	" 8, 1854
Mar. 21, 1856	" "	"	" 18, 1856
July 9, 1856	" "	"	Act of 1853-4
Sept. 29. 1856	" "	"	July 8, 1854
Mar. 18, 1858	Memphis, Clarksville & Louisville	Geo. B. Fleece, Agt..	Feb. 26, 1856
Dec. 20, 1858	" " "	Wm. A. Quarles, Prest	Bridge Aid
June 27, 1859	" " "	Chas. G. Smith, Agt..	" "

10939 to 11018	80,000		Jan. 1, 18 98
909 to 1008	100,000	Letter C	" "
6270 to 6319 & 6574 to 6673	150,000		" "
6424 to 6573	150,000		" "
9302 to 9451	150,000		" "
1582 to 1586	5,000	Letter C	" "
2853 to 2891 & 2495 to 2552	98,000		" "
3586 to 3885	300,000		Jan. 1, 1892
4597 to 4840	244,000		" "
5493 to 5522	30,000		" "
4186 to 4221	36,000		" "
3886 to 4185	300,000		" "
4948 to 5047	100,000		" "
5523 to 5792	270,000		" "
5903 to 5997	68,000		" "
10111 to 10210	100,000		Jan. 1, 1898
11545 to 11644	100,000		" "
367 to 516	150,000	Letter C	" "
1707 to 1878	172,000	" C	" "
326 to 565	240,000	" B	Jan. 1, 1892
566 to 725	160,000	" B	" "
1506 to 1705	200,000		" "
2015 to 2054	40,000		" "
2055 to 2154	100,000		" "
3093 to 3112	20,000		" "
3403 to 3537	135,000		" "
4222 to 4271 & 4392 to 4441	100,000		" "
4492 to 4596	100,000		" "
6100 to 6119	20,000		" "
8295 to 8304	10,000		" "
9112 to 9151	40,000		Jan. 1, 1898

40			39			38			37		
July 9, 1859	Memphis, Clarksville & Louisville		Wm. A. Quarles, Prest	Feb. 11, 1852		9552 to 9851	300,000		Jan. 1, 1898		
Oct. 6, "	" " "		Thos. W. Wisdom, Agt	Bridge Aid		10091 to 10110	20,000		"		
Dec. 3, "	" " "		Chas. G. Smith, Agt..	" "		10231 to 10250	20,000		"		
May 1, 1860	" " "		Wm. A. Quarles.....	Feb. 11, 1852		10839 to 10938	100,000		"		
June 27, "	" " "		" "	" "		11226 to 11394	169,000		"		
July 26, "	" " "		" "	Bridge Aid		11685 to 11704	20,000		"		
" "	" " "		" "	" "		11645 to 11684	40,000		"		
Sept. 22, "	" " "		Geo. B. Fleece, Agt..	" "		517 to 536	20,000	Letter C	"		
Oct. 23, "	" " "		Wm. A. Quarles, Agt.	" "		537 to 716	180,000	Letter C	"		
Dec. 5, "	" " "		Chas. G. Smith, Agt..	" "		1009 to 1028	20,000	Letter C	"		
Feb. 28, 1861	" " "		R. W. Humphreys, Pres	Feb. 11, 1852		1489 to 1571	83,000	Letter C	"		
May 24, 1855	Memphis & Ohio.....		Robertson Topp, Prest	" "		2155 to 2454	300,000		Jan. 1, 1892		
July 11, "	" "		" " "	Act of 1853-4		2455 to 2494	40,000		"		
Oct. 15, "	" "		" " "	Feb. 11, 1852		2892 to 2991	100,000		"		
Nov. 28, "	" "		" " "	Act of 1853-4		3113 to 3132	20,000		"		
Feb. 29, 1856	" "		" " "	"		3233 to 3402	170,000		"		
April 3, 1857	" "		Sam'l P. Wallace.....	"		5243 to 5282	40,000		"		
July 26, 1858	" "		Robertson Topp.....	"		7581 to 7780	200,000		"		
Dec. 17, "	" "		" "	Feb. 11, 1852		8175 to 8294	120,000		Jan. 1, 1898		
Jan. 21, 1859	" "		J. E. R. Ray, Agt...	Bridge Aid		8368 to 8397	30,000		"		
May 2, "	" "		" " ...	"		8630 to 8779	150,000		"		
July 4, "	" "		J. P. Wood, Agt.....	Feb. 11, 1852		9152 to 9301	150,000		"		
Sept. 2, "	" "		" "	" "		9862 to 9961	100,000		"		
" 5, "	" "		" "	Bridge Aid		9962 to 9968	7,000		"		
Dec. 14, "	" "		W. D. Pickett, Agt...	Feb. 11, 1852		10251 to 10307	57,000		"		
Jan. 19, 1860	" "		J. P. Wood, Agt.....	Bridge Aid		10615 to 10627	15,000		"		
						10639 to 10640					
July 20, 1855	McMinville & Manchester....		P. H. Marbury, Agt..	Feb. 11, 1852		2553 to 2852	300,000		Jan. 1, 1892		
" "	" "		" " " ..	" 21, 1856		4472 to 4491	20,000		"		
Nov. 19, 1856	" "		" " " ..	" 21, "		4896 to 4997	52,000		"		
Feb. 20, 1860	Nashville & Chattanooga.....		J. H. Whitesides, Agt	Nov. 4, 1859		10692 to 10773	82,000		Jan. 1, 1898		

May 30, 1860	Nashville & Chattanooga.....	J. H. Whitesides, Agt	Nov. 4, 1859	11195 to 11225	31,000		Jan. 1, 1898
Nov. 16, "	" "	" " ...	"	882 to 908	27,000		"
Mar. 27, 1861	" "	" " ...	"	1572 to 1581	10,000		"
Dec. 23, 1859	Nashville & North Western....	V. K. Stevenson, Agt	Feb. 11, 1852	10332 to 10601	280,000		"
June 13, 1860	" "	" " ...	Bridge Aid	11395 to 11444	50,000		"
" 29, "	" "	Jno. O. Ewing, Agt...	Feb. 11, 1852	11445 to 11544	100,000		"
Aug. 11, "	" "	" " ...	" "	67 to 196	130,000		"
Sept. 14, "	" "	" " ...	Bridge Aid	197 to 360	170,000	Letter C	"
Oct. 29, "	" "	" " ...	Feb. 11, 1852	717 to 881	165,000	Letter C	"
Dec. 18, 1860	" "	" " ...	"	1029 to 1218	190,000	Letter C	"
Jan. 29, 1861	" "	" " ...	"	1239 to 1358	120,000	Letter C	"
Feb. 23, "	" "	" " ..	"	1359 to 1488	130,000	Letter C	"
April 22, "	" "	" " ...	"	1587 to 1706	120,000	Letter C	"
Jan. 28, 1859	Rogersville & Jefferson.....	R. G. Fair, Prest....	Bridge Aid	8343 to 8365	23,000		"
July 7, "	" "	"	Feb. 11, 1852	9452 to 9551	100,000		"
Aug. 1, 1860	" "	"	Bridge Aid	11705 to 11740	36,000		"
July 4, 1854	Tennessee & Alabama.....	J. S. Claybrooke, Agt	Feb. 8. 1854	916 to 1115	200,000		Jan. 1, 1892
Sept. 9, "	" "	" " "	"	1116 to 1215	100.000		"
Jan. 1, 1858	" "	Jno. Marshall.....	March 15, 1858	6220 to 6290 6320 to 6423 8080 to 8111	186,000		Jan. 1, 1898
" 16, "	" "	Frank Hardeman....	Feb. 26, 1856	5971 to 5987	17,000		Jan. 1, 1892
June 4, "	" "	Jno. Marshall.	" 11, 1852	6781 to 7080	300,000		"
Aug. 27, "	" "	"	Act of 1857-8	8112 to 8154	43,000		Jan. 1, 1898
Dec. 15, 1859	" "	"	Mar. 15, 1858	10308 to 10321	14,000		"
May 10, 1858	Winchester & Alabama.....	V. K. Stevenson, Agt.	Act of 1856	6674 to 6680	7,000		Jan. 1, 1892
June 9, "	" "	" " "	Bridge Aid	7081 to 7087	7,000		"
July 22, "	" "	" " "	Feb. 11, 1852	7431 to 7580	150,000		"
Dec. 30, "	" "	" " "	Bridge Aid	8325 to 8326	2,000		Jan. 1, 1898
Jan. 31, 1859	" "	" " "	Feb. 11, 1852	8327 to 8337 8338 to 8342 8366 to 8367 8398 to 8490	111,000		"
June 21, "	" "	" " "	"	8976 to 9111	136,000		"
Feb. 23, 1860	" "	Jas. R. Bright, Agt...	Bridge Aid	10774 to 10793	20,000		"

48 47 46 45

RECAPITULATION.

Cincinnati, Cumberland Gap & Charleston has received		132,000
Central Southern	"	534,000
Edgefield & Kentucky & Louisville & Nashville has received		211,000
East Tennessee & Georgia	"	1,162,000
Edgefield & Kentucky	"	645,000
East Tennessee & Virginia	"	1,602,000
Knoxville & Kentucky	"	180,000
Louisville & Nashville	"	455,000
Mississippi & Tennessee	"	98,000
Mississippi Central & Tennessee	"	574,000
Mobile & Ohio	"	1,296,000
Memphis & Charleston	"	1,095,000
Memphis, Clarksville & Louisville	"	1,042,000
Memphis & Ohio	"	1,499,000
McMinnville & Manchester	"	372,000
Nashville & Chattanooga	"	150,000
Nashville & North Western	"	1,455,000
Rogersville & Jefferson	"	159,000
Tennessee & Alabama	"	460,000
Winchester & Alabama	"	433,000
		$13,554,000

572

Deposition of Eugene Kelly.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE. 1

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Intern Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, *et al.* 2

Testimony and proofs for final hearing on the part of the complainants, taken before William H. DeLancey, Special Examiner, duly appointed herein, under and pursuant to the 67th Rule in Equity, as amended. 3

52 Broadway, New York,
October 10, A. D. 1879.

Met pursuant to notice.

Present—MR. ANDREWS for complainants, MR. HUMES for Respondents.

EUGENE KELLY, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says : 4

5 (Deposition taken subject to all legal objections of both parties.)

Direct-examination by MR. ANDREWS:

1 Q. Are you one of the complainants in these causes?

A. I believe I am.

2 Q. Are you an owner and holder of Tennessee bonds.

A. Yes, sir.

6 3 Q. Will you produce before the examiner Tennessee bonds of which you are the owner and holder for his inspection, and that of respondent's counsel, here present?

A. Yes, sir.

(Witness produces 21 bonds of the State of Tennessee, issued to and sold by the East Tennessee & Virginia Railroad Co.

Also nine bonds of the State of Tennessee, issued to and sold by the East Tennessee &
7 Georgia Railroad Co.

Also three bonds of the State of Tennessee, issued to and sold by the Nashville & Chattanooga Railroad Co.

Also 16 bonds of the State of Tennessee, issued to and sold by the Memphis & Charleston Railroad Co.)

(Certified copies of these last are hereto annexed, marked Compl't's Exhibit No. 1,
8 W. H. D. L., Spl. Exr.)

(Certified copies of receipts given by the several railroads to the State for bonds are offered in evidence and filed separately, under a stipulation of counsel, as Complainant's Exhibits.)

Direct examination closed.

Adjourned to Oct. 14, 1879, 2 P. M.

Cross-examination by MR. HUMES:

4 x Q. How long have you owned the bonds you have here produced in evidence?

A. Can't tell very well. I have owned some of them since 1859—1857-8 or '59 I think the oldest. I bought I don't know how many—probably fifty—within the last two years. I have over three hundred bonds altogether. I don't know whether these are among the fifty or not, probably some of them are. I have been trying to get the old bonds when I bought.

5 x Q. The bonds you have purchased during the last two years were bought how?

A. They were bought at the Stock Exchange.

6 x Q. When you made these purchases at the Stock Exchange did you make them in person or through a broker?

A. Through a broker.

7 x Q. Did you instruct him by by oral orders or written?

A. By oral orders.

8 x Q. What were those oral orders, as well as you can recollect?

A. To buy old Tennessee bonds.

9 x Q. Did you know what were the numbers of the bonds, or for what purpose they were issued until after the broker delivered them to you?

A. I bought them with the intention of buying bonds that were liens on railroads. I knew very well that if he bought old Tennessee bonds he would buy bonds that were liens on the roads. I told him to buy bonds issued under the act of 1851-2, because I was always told that that was the act that made the bonds liens. I did not know the numbers till I got them.

10 x Q. Who were the brokers that bought the fifty bonds or so for you during the last two years?

13 A. Mr. Lawrence, our broker, bought some, and a Mr. Ketchum bought some.

11 x Q. Are these gentlemen brokers in the city now?

A. Yes, sir.

12 x Q. Do I understand you, Mr. Kelly, to say that you gave your brokers any further instructions than simply to buy old Tennessee bonds?

A. That was all. I may have named the price.

13 x Q. As to the bonds bought by you more than
14 two or three years ago, did you or not buy them also through brokers?

A. Some of them.

14 x Q. Did not the State of Tennessee default in the payment of the interest coupons attached to the old bonds owned by you during the war?

A. It did.

15 x Q. Did you ever present or claim payment of any of said coupons from a railroad?

A. Never; that is, no formal demand until this
15 suit.

16 x Q. Did you not fund these coupons and register the bonds under the funding act of 1873?

A. I paid the charge exacted by some Tennessee official for having the bonds registered and the coupons funded into new bonds.

17 x Q. Have you not entered into a contract with Calvin Amory Stevens and others embodying the terms on which these suits are to be prosecuted?

16 A. I never had any contract with Mr. Stevens personally.

18 x Q. Have you made such a contract with other persons?

A. I agreed to pay my share of the expenses with other parties.

19 x Q. Is that contract in writing?

A. I will see, and answer to-morrow.

(Two papers produced and marked Respts Exhibits 1 and 2.—W. H. D. L., Spl. Exr.) 17

20 x Q. Did you sign a paper with E. D. Morgan & Co., Geddes, and others, to Gov. Porter, asking him to call a special session of the Legislature?

A. I did not; but I went to Nashville during the recent session of the Legislature to effect a compromise with the State.

21 x Q. Please produce and file a list of the bonds of Tennessee you own, as well as those you have proved as those you have not? 18

A. I will see my counsel in relation to it, and I will produce and file it.

(List produced, marked Respt.'s Exhibit No. 3.—W. H. D. L., Spl. Exr.)

22 x Q. Did you not know while the Tennessee roads were buying up the Tennessee State bonds to settle their debt with the State under the acts of 1869 and of 1870, that they were so buying? 19

A. I did not know.

23 x 2. Did you not have some of the new substitution bonds of any of the companies offered to you?

A Not to my knowledge; and I never bought one.

EUGENE KELLY.

Subscribed and sworn before me, this 14th day of October, 1879. 20

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the

above-entitled suit in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly sworn in the above-entitled suit, and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that Exhibits hereto annexed, marked Complt.'s Exhibit No. 1, and Respt.'s Exhibits Nos. 1, 2 and 3, were introduced in evidence in said cause during the taking of said deposition.

Dated Nov. 25th, 1879.

WILLIAM H. DELANCEY,
Special Examiner.

IN THE CASE OF

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

IN THE UNITED STATES CIRCUIT COURT

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of Eugene

Kelly in this cause sixteen (16) Tennessee bonds, 25
each bond being for the principal sum of one thousand dollars and bearing the impression of the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANT'S EXHIBIT No. 1. 26

W. H. D. L., Spl. Exr.

M. UNITED STATES OF AMERICA. M.

No. 326. B.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
or order, one thousand dollars, lawful money of the 27
United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its ses- 28
sion of 1851–2.

In witness whereof, I, W. B. Campbell, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the great seal of said State to be here-

29 to affixed, at Nashville, this 1st day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RANNEY,
Secretary of State.

$1,000. $1,000.

The other fifteen (15) of said bonds are of like
30 tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 333, 429, 526, 529, 530, 607, 658, are dated on the 1st day of January, 1852; No. 1,575 is dated on the 1st day of January, 1855; Nos. 3,422, 4,427, 4,436, 4,495, 4,517, 4,569, 4,574, are dated on the 1st day of January, 1856.

Nos. 333, 429, 526, 529, 530, 607, 658, are signed: W. B. Campbell, Governor; W. B. A. Ranney, Secretary of State.

31 No. 1,575 is signed: Andrew Johnson, Governor; W. B. A. Ranney, Secretary of State.

Nos. 3,422, 4,427, 4,436, 4,495, 4,515, 4,569, 4,574, are signed: Andrew Johnson, Governor; F. N. W. Burton, Secretary of State.

Said bonds having thirty (30) coupons attached to Nos. 326, 333, 607, 4,436, 4,495, 4,517; thirty-three (33) coupons, attached to Nos. 429, 526, 529, 530, 658, 1,575, 3,422, 4,569, 4,574, and thirty-two (32) coupons attached to No. 4,427.

32 The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer Thirty dollars, in the City of New York,

on the first day of July, 1877, being the semi-annua 33
interest then falling due on bond No. 326.

Arth. R. Crozier, Comptroller.

All the coupons attached to bonds numbered 326, 333, 429, 526, 529, 530, 607, 658, 1,575 are signed

Arth. R. Crozier, Comptroller.

All the coupons attached to Nos. 3,422, 4,427, 4,436, 4,495, 4,517, 4,569, 4,574, are signed

J. C. Luttrell, Comptroller.

There are five (5) overdue coupons upon each of 34
the following numbered bonds, viz : Bond No. 326, 333, 607, 4,436, 4,495, 4,517.

The last coupon thereof having fallen due on the 1st day of July, 1877. The other four of said coupons fall due at intervals of six months from the date of the coupon above-mentioned.

There are eight (8) overdue coupons upon each of the following numbered bonds, viz : Bonds No. 429, 526, 529, 530, 658, 1,575, 3,422, 4,569, 4,574—the last coupon thereof having fallen due on 1st day of 35
January, 1876. The other seven (7) of said coupons fall due at intervals of six months from the date of the coupons above-mentioned.

There are seven (7) overdue coupons upon Bond No. 4,427, the last coupon thereof having fallen due on the 1st day of July, 1876, the other six (6) of said coupons fall due at intervals of six months from the date of the coupon above-mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, Eugene Kelly, for 36
inspection by me, and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows : on Bond No. 326, "Registered under 9th section of Funding Act, approved March 17, 1873. Jno. C. Burch, Comptroller ; Chas. N. Gibbs, Secretary of State."

37				Audited	Dec.	16,	1873.
	On Bond No.	333	same	"	"	"	"
	"	429	"	"	June	2,	1874.
	"	526	"	"	"	"	"
	"	529	"	"	"	"	"
	"	530	"	"	"	"	"
	"	607	"	"	Dec.	16,	1873.
	"	658	"	"	Aug.	18,	1874.
	"	1575	"	"	Sept.	8,	1873.
	"	3422	"	"	"	"	"
38	"	4427	"	"	Aug.	14,	1874.
	"	4436	"	"	Dec.	16,	1873.
	"	4495	"	"	"	"	"
	"	4517	"	"	"	"	"
	"	4569	"	"	Feb.	20,	1874.
	"	4574	"	"	Aug.	7,	1873.

On Bond No. 607.

"State of Wisconsin. The within bond has been assigned to the
39 State Treasurer as Banking Secuity. Bank Comptroller's office, Madison, Jun 2, 1857."

WM. W. DENNIS,
Bank Comptroller.

"Madison, July 1, 1861. Released without recourse in any event to

SAML. D. HASTINGS,
State Treas'r Wis.

40

Witness:
ADOLPH J. CRAMER,
O. G. SCOFIELD.

STATE OF WISCONSIN, } ss.:
County of Dane.

On the 1st day of July, A. D. 1861, personally appeared before

me the above-named Saml. D. Hastings, Treasurer of the State of Wis., to me known, and acknowledged the execution of the above release to be his free act and deed. 41

[L.S.] O. G. SCOFIELD,
Notary Public,
Wis.

On Bond No. 526, } Assigned and transferred by E.
On Bond No. 529, } Cramer to the State Treasurer 42
On Bond No. 530, } of the State of Wisconsin, in trust for the State Bank of Wisconsin. Madison, April 14, 1853.

J. S. BAKER,
Bank Comptroller.

"CHAS. KUEHN,
State Treasurer.
By CARL HABICH,
Asst. State Treas'r." 43

On Bond No. 326, } Assigned and transferred as
On Bond No. 333, } above.

E. H. JANSON,
State Treasurer.
By D. A. SEAVER,
Asst. Treasurer.

Madison, July 1, 1861.
Released without recourse in any event to 44

SAMUEL D. HASTINGS,
State Treasurer Wis.

Witness:
ADOLPH J. CRAMER, }
C. H. PURPLE. }

45 "STATE OF WISCONSIN, } ss.:
County of Dane. }

On the 1st day of July, A. D. 1861, personally appeared before me the above-named Saml. D. Hastings, Treasurer of the State of Wisconsin, to me known, and acknowledged the execution of the above release to be his free act
46 and deed.

O. G. SCOFIELD,
[L.S.] *Notary Public,*
Wis.

RESPONDENT'S EXHIBIT No. 1,
W. H. D. L.,—Spl. Exr.

47 *To* THE COMMITTEE OF TENNESSEE BONDHOLDERS:

I hereby assent to the plan and conditions of the committee's circular of May 17th, 1879.

LIST OF BONDS.

COLOR.	LETTER.	NUMBERS.

48

RESPONDENT'S EXHIBIT NO. 2.—W. H. D. L., Sp'l. Ex'r. 49

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing our first mortgage liens against the railroads in Ten- 50
nessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by Mr. C. Amory Stevens. Prompt action on the part 51
of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennessee," addressed the following argument to the pub- 52
lic, which was printed in pamphlet form in 1868:

"The important question for the bondholder now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

53 "*loaned.* This mortgage, as bondholders must
"know, enures to their benefit. For the payment
"of twenty-nine million bonds, which will be the
"entire amount of bonds issued to the roads, in-
"cluding those that may be issued under the recent
"Act of the Legislature, *the bondholders have*
"*as security* roads which, when completed, will be
"nearly two thousand miles in length, and which
"will be worth fully seventy million dollars. In
"addition to that, they have the whole resources
54 "of the State solemnly pledged to them."

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the
"lien in a fiduciary capacity. She holds it *in trust*
"for the benefit of the bondholders. She honor-
"ably has no right to abandon it or surrender it to
55 "the companies. She ought not to prove faithless
"in this *trust*, but maintain and execute it as the
"bondholders understood it and as the people of
"the State understood it. The bondholders are in-
"terested in these resources to pay the bonds they
"hold, and the people are interested in them to see
"that they are not to be taxed to pay interest or
"principal of bonds for which the railroads are
"pledged by the terms of the law."

The assurance of our rightful legal claims against
56 the railroads is strongly fortified by the following facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit the question whether or not

the holders of Tennessee bonds had a first mortgage 57
lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to 58
the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly welcomed a decision which would have relieved 59
their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. 60
Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr. O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to

61 add that Mr. Southmayd, of the above firm, urged, before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated.

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road.

62 East Tennessee, Virginia & Georgia Railroad, leased lines and branches:

East Tennessee & Georgia Railroad	$614,000
East Tennessee & Virginia Railroad	1,218,000
Memphis & Charleston Railroad	830,000
Cincinnati, Cumberland Gap & Charleston Railroad	350,000
East Tennessee & Western North Carolina Railroad	34,000
63 Total	$3,036,000

Louisville & Nashville Railroad Company, and purchased and leased lines:

Main Line	$ 298,000
Memphis, Clarksville & Louisville Railroad	791,000
Memphis & Ohio Railroad	1,176,000
Tenn. & Ala. R. R., Nash. & D. R. R.,	468,000
Cent. Southern R. R., Nash. & D. R. R.,	362,000
64 St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad	645,000
Total	$3,740,000

Nashville, Chattanooga & St. Louis Lines:		65
Nashville & Chattanooga	$ 114,000	
Nashville & North-Western	1,385,000	
Winchester & Alabama	457,000	
McMinnville & Manchester	356,000	
Total	$2,312,000	
Mobile & Ohio Railroad	953,000	
New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad	480,000	66
Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad	514,000	
The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding	11,647,000	
On which there is accrued 23 per cent. interest	2,678,810	67
Total due	$14,325,710	

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

The members of the committee are owners to a large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent. com- 68

promise bonds is already questioned in Tennessee, for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt in the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past-due coupon from each bond of that description. This will be required to defray the necessary costs and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each assenting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati. to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & CO.

JOHN T. TERRY,
OF E. D. MORGAN & CO.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

77

RESPONDENT'S EXHIBIT No. 3.
W. H. D. L., Spl. Exr.

Tennessee Bonds, property of EUGENE KELLY.

	220	2786	4955	7422	9460	192	3009	7302	1616	1645	2688
	289	2792	4956	7490	9500	263	3355	8879	1617	1646	2714
	292	2822	5047	7542	9551	315	4076	9003	1618	1647	4953
	321	3088	5188	7839	9537	399	4188	785	1619	1648	4954
	333	3124	5322	7886	9466	485	4159	803	1620	1649	7182
	429	3305	5417	7918	9618	527	4390	789	1621	1650	7316
	526	3422	5628	7943	9621	574	4392	2852	1622	2124	9271
	529	3543	5786	7986	9683	584	4458	3181	1623	2217	9291
	530	3548	5787	8202	9713	597	4680	242	1624	2218	73
	607	3616	5838	8207	10021	609	4833	243	1625	2396	187
78	658	3702	5846	8214	10399	1037	1539	244	1626	2614	2128
	726	3876	5906	8241	10436	1162	1540	365	1627	2616	2992
	900	4436	5342	8553	10772	926	624	366	1628	2629	6675
	901	4495	6108	8670	10773	1254	1858	367	1629	2860	6685
	902	4427	6327	8672	10326	1276	1860	368	1630	2862	1614
	797	4475	6329	8673	10360	1315	1882	369	1631	2863	1615
	1047	4517	6349	8772	10363	1563	2172	574	1632	3087	1643
	1052	4569	6484	8981	11055	1630	2173	575	1633	3855	1644
	1575	4574	6807	9011	11034	1752	2174	990	1634	3856	3975
	1773	4597	6830	9358	11176	91	2176	991	1635	3907	3976
	1811	4708	7019	9961	11177	94	2177	992	1636	3911	3977
	1820	4738	7021	10561	11201	97	3782	993	1637	3912	3978
	1825	4783	7046	8593	11475	161	3996	1063	1638	3914	4771
	1837	4875	7117	8621	11653	520	4998	1054	1639	3971	5031
	1974	4876	7129	8851	49	1055	5023	1325	1640	3972	5032
	1938	4877	7173	9053	64	1346	2850	1612	1641	3973	5033
	2240	4878	7177	9079	63	1365	6604	1613	1642	3974	5034
	5035	5254	5798	5952	6527						
	5036	5505	5799	5961	5129						
	5077	5545	5800	5962							
79	5252	5586	5801	5993							
	5253	5584	5951	6234							

319 Bonds.

80

Deposition of John T. Terry.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

2

Testimony and proofs for final hearing on the part of the complainants, taken before WILLIAM H. DELANCEY, Special Examiner, duly appointed herein under and pursuant to the 67th Rule in Equity, as amended.

52 BROADWAY, NEW YORK,
October 10th, A. D. 1879.

3

Met pursuant to notice.

Present—Mr. E. L. ANDREWS, for Complainants.
Mr. W. Y. C. HUMES, for Respondents.

JOHN T. TERRY, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

4

5 *Direct Examination* by MR. ANDREWS:

1 Q. Are you one of the complainants in these causes?

A. I am.

2 Q. Are you an owner and holder of Tennessee bonds?

A. I am.

3 Q. Will you produce before the Examiner, for his inspection, and that of counsel for respondents here present, Tennessee bonds of which you are the
6 owner and holder.

A. I will. There they are.

(Witness produces six bonds of the State of Tennessee issued to and sold by the Memphis & Charleston R. R. Co.—*three white, three green.*)

(Certificate of said white bonds is hereto annexed, marked "Compl't's Exhibit No. 1, W. H. D'L., Sp'l Ex'r.")
7

(Certificate of said green bonds is hereto annexed, marked "Compl't's Exhibit No. 2, W. H. D'L., Sp'l Ex'r.")

(Certified copies of receipts given by the railroad companies to the State for bonds are offered in evidence, and marked as Complainant's Exhibits, and filed, under a stipulation of counsel, separately.)
8

Direct examination closed.

Cross-examination by MR. HUMES:

It is stipulated and agreed by both parties that, as to any bonds proved by Mr. Terry, issued after the Act of 1860, the numbers to

include them shall be restored in the bill as originally printed. 9

E. L. ANDREWS,
Sol'r for Compl'ts.
W. Y. C. HUMES,
Sol'r for Def't.

4 x Q. From whom, and at what date and price, did you purchase bonds Nos. 3,672, 3,673 and 3,866, Green B, dated 1 Jan'y, 1868?

10

(Objected to as immaterial.)

A. Seven or eight years ago. All these bonds cost at the prices in the Exhibits which I will furnish. I will examine, and, if I can, give the exact dates and prices.

(Paper produced, marked "Resp't's Exhibit No. 1, W. H. D'L., Sp'l Ex'r.")

5 x Q. Same question as to Nos. 719, 3,515, 4,237. 11
White B.

A. Same answer.

6 x Q. Are you not a member of the firm of E. D. Morgan & Co., and did you not buy these bonds on account of the firm?

A. I am, and did so buy them, and also on account of the firm of J. S. Morgan & Co., of London.

7 x Q. Before Gov. Morgan, a member of your firm, went to Europe in 1873, did you not sell out 12
entirely your Tennessee bonds, and did you not purchase these Tennessee bonds after he went to Europe, or since?

A. When Gov. Morgan was in the Senate of the United States, he wrote us that he had conferred with the members of Congress and senators, and, also, I think, with Andrew Johnson, of

13 Tennessee, and that he had a very high opinion of Tennessee bonds, in consequence of which we became purchasers of Tennessee bonds. This was while he was in the Senate—his term, I think was from 1863 to 1869. We sold out these bonds, and bought bonds and have owned them more or less ever sinc.

The bonds we now hold were bought from January, 1873 to August, 1873. We also bought some in March and April, 1875. According to my best
14 recollection we have not sold a single bond since 1873, except as appears from the Exhibits. We sold twenty new bonds and bought twenty old bonds which do not appear on the Exhibit. The firm of E. D. Morgan & Co. bought these.

8 x Q. Do you know whether E. D. Morgan & Co. had a correspondence with Gov. Porter in 1876–77?

A. I do. I think I wrote the letters and telegrams.

15 9 x Q. Did you sign a proposition signed by some twenty or thirty other bondholders and agents of bondholders addressed to Gov. Porter of Tennessee, dated either in December, 1876, or January or February, 1877, requesting him to submit a proposal therein contained to the General Assembly of the State of Tennessee of compromise in respect to the bonds you have now proved in these cases, and others that you then may have had?

16 (Objected to as not the best evidence, and immaterial.)

A. I have an impression that I did, but I cannot answer the question fully without seeing the document itself.

10 x Q. Are the bonds you have now sued upon all the bonds you purchased in 1873–75?

(Objected to because other property belonging to the witness not in these suits has no relevancy or materiality to the case.) 17

A. No, sir. I wish they were.

11 x Q. Were not the other bonds you purchased in 1873–5 bonds issued by the State of Tennessee for purely State purposes and not to railroads, and did you not buy them at the same price at the same date?

A. I supposed all these bonds were liens on railroads, and was deceived. I think I, or my firm, or any one I am interested in have very few bonds except those issued to or for railroads. 18

12 x Q. Please furnish the numbers of all the bonds which you purchased in 1873–75, and full description showing which are railroad bonds and which are not?

A. I will, if I can.

Adjourned to October 11th, 10:30 A. M. 19

NEW YORK, Oct. 11, 10:30 A. M.

Present—Counsel as before.

Cross-examination resumed:

Witness produces and files with his deposition the Exhibits called for in the last question.

(Marked Respondents' Exhibit No. 2.—W. H. D. L., Spl. Ex'r.) 20

13 x Q. What was the mode of selling and buying bonds in 1873–74–75?

A. According to my recollection, in 1873, bonds were sold as State bonds without any regard to their issue, but I am not quite sure whether they were not sold as old or new bonds at that time.

14 x Q. What was the distinction between old and new bonds ?

A. I should say that the old bonds were ante-bellum bonds.

15 x Q. Is it not a fact that the old bonds were distinguished from the new bonds by having several unpaid coupons attached to each of them which the new did not have ?

A. I am unable to give an intelligent answer to that question.

16 x Q. When bonds were sold at the Board of Brokers, please state fully and minutely the mode of bringing them before the Board for sale, and of selling them, and of their delivery ?

A. I never was in the Board in my life ; I cannot therefore answer the question. We buy through brokers, and they bring them in and we pay for them ; we are not brokers.

17 x Q. Did you buy the bonds contained in your Exhibit through brokers or not ?

A. We bought them all through brokers except the 74 which were funded.

18 x Q. In giving your order to the brokers how was it expressed ?

A. I don't think it was ever given in writing ; we gave verbal orders sometimes to buy old and sometimes new bonds.

19 x Q. Did you or any member of your firm ever see the the bonds purchased until they were delivered by the brokers ?

A. No, sir.

20 x Q. Did you ever designate any particular Tennessee railroad of those shown on your Exhibit, in directing your brokers to purchase Tennessee bonds ?

A. We did not and could not, as bonds are not sold in that way at the Board ?

21 x Q. How are they sold at the Board ?

A. They are sold as old and new bonds, and new series. 25

22 x Q. Then the purchaser cannot tell what bonds he is to get under his purchases at the Board until they are delivered?

A. He cannot.

23 x Q. Were not all of yours purchased at the Board?

A. Yes, sir; I believe they were, except the funded bonds which we funded ourselves.

24 x Q. Please give me the names of the brokers who purchased your bonds? 26

A. I cannot; we have no record of the brokers from whom we purchased bonds that I recollect of. We give a broker an order for bonds—say fifty, and he delivers them, and we pay for them. It is possible our book-keeper may be able to tell. I can't tell from whom we bought a single bond.

25 x Q. How and when did you ascertain the railroads to whom the bonds were issued that are contained in your Exhibit? 27

A. I ascertained from Peter Geddes' clerk; Mr. Robinson, the Secretary of Com. of Tennessee bondholders had the list; he did so within the last two or three years.

26 x Q. When was the Committee of Tennessee bondholders first organized?

A. Three or four years ago this past summer.

27 x Q. Have you made an agreement with Calvin Amory Stevens and others, embodying the terms upon which these suits are to be prosecuted; if yea, 28 is that agreement in writing?

(Objected to as immaterial and irrelevant.)

Complainants' counsel asks what respondents' counsel proposes to show.

The witness not having answered this question, it is agreed by counsel on both

29 sides to refer this question to Judge Blatchford, as to its legality under the above objection. Until this is decided the cross-examination is suspended.

Re-direct-examination by Mr. ANDREWS:

28 Q. Did you become the individual owner of the bonds you have proved before the Examiner by purchase from the firm of E. D. Morgan & Co?

A. I did.

30 29 Q. When your firm of E. D. Morgan & Co. and yourself became the owners of Tennessee bonds were you not aware that they were first mortgage liens upon railroads in that State?

(Respondent's counsel objects as illegal and incompetent, because it is leading, and because it asks for a legal opinion from the witness.)

A. We were so informed by the Treasurer of the State of Tennessee in our office.

31

(Respondent's counsel objects to the answer as illegal and incompetent, because it is mere hearsay.)

30 Q. When your firm and yourself became purchasers of Tennessee bonds, what security for the payment of those bonds and the interest thereon did you believe you were acquiring by such purchases?

A. I supposed the railroads would pay the amount 32 into the State, and we should receive it from the State, the State making good any deficiency.

31 Q. What security on property did you think you were acquiring by such purchases?

A. The security of the railroads—first mortgages.

32 Q. In answer to the question relating to the letter to Governor Porter you stated that you thought the firm of E. D. Morgan & Co. might have

been one of the signers of that letter ; did you not 33
have conferences with R. T. Wilson on the subject of that communication and the proposed compromise then pending ?

A. I did.

33 Q. Is this the same R. T. Wilson who is an officer of the Tennessee railroad ?

A. Yes, that is the gentleman.

34 Q. Mr. Wilson was very active in efforts to procure the Tennessee bondholders to surrender their bonds and accept a new obligation from the 34
State of Tennessee, was he not ?

(Respt's counsel objects as incompetent and illegal because it is leading and not proper on re-examination.)

A. If you mean to ask me if Mr. Wilson was very active in endeavoring to procure a settlement with the State, I answer he was.

35 Q. Was he not also very active in procuring the bondholders to enter into the arrangement de- 35
scribed in my previous question ?

(Same objection.)

A. He wanted to have us all agree to a compromise, if that is what you mean.

36 Q. What did you understand was the interest of R. T. Wilson in his anxiety to induce the Tennessee bondholders to surrender their present holdings and accept other bonds of the State of Tennes- 36
see ?

A. I inferred that the object was a desire to have the railroads relieved from their obligations on the bonds.

(Respt's counsel objects to answer as illegal and incompetent.)

37 37 Q. Did you state anything to R. T. Wilson about the time of his efforts to carry through the settlement above referred to, in reference to the liens of Tennessee bonds on railroads in that State, and if you stated anything, what?

A. I can't state exactly what I said to him, but we had a conversation on the subject. I expressed the opinion that the bondholders might bring a suit against the roads, to which he replied: "That ends it; I would have nothing to do with the matter
38 further," or words to that effect. That is, if the suits were brought, he would have nothing more to do with us in attempting to effect a compromise with the State.

38 Q. Was it not about this time that you had the written opinion of one of the most distinguished lawyers in Tennessee to the effect that Tennessee bonds were made paramount liens on railroads by statutes of that State?

39 (Respt's counsel objects, because it calls for incompetent, hearsay, as well as secondary evidence, and also as leading.)

A. I think it was.

Re-cross examination by MR. HUMES:

39 x Q. Who was the Tennessee treasurer with whom you had the conversation in your office, and when was it?

A. My impression is his name was Morrow, and
40 he had some Tennessee bonds for sale. This was previous to these purchases in 1873, to the best of my rocollection. It was since the war. The conversation with Mr. Wilson, which I have testified to, took place about the time of the letter to Governor Porter, in '76 or '77.

Adjourned to Oct. 17, 1879.

 41

40 x Q. Will you now answer cross-question 27, just read to you by the Examiner?

A. I produce two papers which embody the agreement.

Papers marked in evidence,
Resp'ts. Exhibit No. 3, W. H. D. L., Spl, Exr.
" " " 4, W. H. D. L., Spl. Exr.

42

41 x Q. Are those two papers the agreement you signed?

A. I believe they are copies of them; correct copies of them.

42 x Q. Is that agreement embodied in these two papers, the only one that you have entered into for the prosecution of these suits?

A. We have entered into no contract which includes the payment of all our counsel.

43 x Q. I ask again, whether the foregoing Exhibits contain the only agreement that you have made for the prosecution of these suits? 43

(Compl'ts' counsel objects to the question as immaterial and irrelevant, and he objects to any answer, and consents to waive subpœna and to go before Judge Blatchford on the validity of the question.)

A. Under advice of counsel I decline to answer.

44 x Q. Did you join in the preparation of that paper and sign the name of E. D. Morgan and Co. to it? 44

A. I cannot answer that question, but I admit E. D. Morgan & Co., signed it, some one of the firm.

(This paper is the same as annexed to deposition of Peter Geddes, as Respondents'

45 Exhibit No. 1, and it is consented that it need, not be attached to this deposition.)

45 x Q. Did a member of the firm of E. D. Morgan & Co. sign the letter now shown you of Feby. 23, 1877, addressed to his Excellency, James D. Porter, Governor of Tennessee?

A. I recognize the signature as that of my partner. I think I was temporarily absent in Cuba at the time.

46 46 x Q. On the bonds which you held prior to 1873 were there not attached a number of unpaid coupons, I mean on the old Tennessee Sixes?

A. I think there were.

47 x Q. Did your firm or you ever claim, demand or present for payment any of these unpaid coupons (while you held them) to any railroad Co.?

A. No, sir; I think not.

48 x Q. Were you not aware that the railroads were negotiating for State bonds, and attempting
47 to sell their own to purchase State bonds to make settlements of their debts to the State while these negotiations were progressing?

A. I was not.

49 x Q. When in the spring of 1870, the East Tennessee Va. & Ga., Railroad Co. were endeavoring to purchase State bonds with which to pay their debt to the State, were you not aware or informed of it?

A. I was not; never knew they bought a bond.

48 50 x Q. Were you not informed or aware of this same company's efforts in New York City, through the Stock Exchange, of New York, and other parties to sell their substitution bonds?

A. I was not, and never knew they had a bond out on the road till within a few weeks. Never heard of it.

Adjourned to 20th Oct., 1879.

October 20th, 1879. 49

Adjourned to further notice.

November 24th, 1879.

And further deponent saith not.

JOHN T. TERRY.

Subscribed and sworn before me this 24th day of November, A, D. 1879.

WILLIAM H. DELANCEY,
Special Exaniner. 50

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States, for the Western District of Tennessee, to take the testimony and proofs of both parties, in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereunto annexed I was attended at my office, No. 52 Broadway, in the City 51 of New York, by the counsel and witness aforesaid.

That the said witness was duly sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness and by him subscribed in my presence. And that the Exhibits hereto annexed marked Complts., Exhibits, No. 1, 2, and Respondents Exhibits, No. 1, 2, 3 and 4, were introduced in evidence in said cause during the taking of said deposition. 52

Dated 24 Nov., 1879.

WILLIAM H. DELANCEY,
Special Examiner.

53 In the case of Calvin Amory Stevens, *et al.*, on behalf of the holders of Internal Improvement Bonds, of Tennessee issued to the Memphis & Charleston Railroad Company

versus

54 The Memphis & Charleston Railroad Company, *et al.*

In the United States Circuit Court,

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of John T.
55 Terry in this cause three (3) Tennessee Bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

COMPLAINANTS EXHIBIT, No. 1,

W. H. D. L., Sp'l Ex'r.

56 M. United States of America. M.

No. 719. B.

State of Tennessee.

Know all men by these presents, that the State of Tennessee acknowledges to owe to or order, one thousand dollars, lawful money of the

United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of the General Assembly of said State, passed at its Session of 1851–2.

In witness whereof I, W. B. Campbell, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this 1st day of January, 1852.

W. B. CAMPBELL,
Governor.

W. B. A. RANNEY,
Secretary of the State.

$1,000. $1,000.

Color, white.

The other two (2) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 3,515, 4,237.

All of said bonds are dated on the 1st day of January, 1856.

Nos. 3,515, 4,237 are signed:

ANDREW JOHNSON,
Governor.

FR. N. W. BURTON,
Secretary of State.

61 Said bonds having thirty-two (32) coupons attached to each bond.

The last coupon attached to each of said bonds being the coupon first falling due is in all respects except as hereinafter stated similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, on the first day of July, 1876, being the semi-annual
62 interest then falling due on bond No. 719.

ARTH. A. CROZIER,
Comptroller.

All the coupons attached to bonds number 3,515, 4,237 are signed.

J. C. LUTTRELL,
Comptroller.

There are seven (7) overdue coupons upon each
63 of the afore numbered bonds, the first coupon thereof having fallen due on the 1st day of July, 1876. The other six of said coupons fall due at intervals of six months from the date of the coupon above mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, John T. Terry, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

64 The endorsements on said bonds are as follows: on bond No. 719, registered under 9th Section of Funding Act, approved May 17, 1873. Jno. C. Burch, Comptroller, Chas. N. Gibbs, Secretary of State.

Audited, January 26, 1874.
On bond No. 3,515, same " " " "
" " " 4,237, " " " " " "

On the face of bond 3,515 are the words "approved as 3,515." 65

WILLIAM H. DELANCEY,
Special Examiner.

66

IN THE CASE OF CALVIN AMORY STEVENS, *et al.*, ON BEHALF OF THE HOLDERS OF INTERNAL IMPROVEMENT BONDS, OF TENNESSEE, ISSUED TO THE MEMPHIS & CHARLESTON RAILROAD COMPANY

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

67

IN THE UNITED STATES CIRCUIT COURT,

For the Western District of Tennessee.

I hereby certify that there were produced before me during the taking of the deposition of John T. Terry in this cause three (3) Tennessee Bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the Great Seal of the State of Tennessee on the face thereof. 68

A true and exact copy of one of said bonds is as lows:

69 COMPLAINANTS EXHIBIT No. 2.

W. H. D. L. *Spl. Exr.*

$1,000. $1,000.

UNITED STATES OF AMERICA.

No. 3,672. No. 3,672.

Know all men by these presents, that the State of
70 Tennessee acknowledges to owe to or order, one thousand dollars of the lawful money of the United States of America, which the said State promises to pay in the city of New York, on the 1st day of January, 1900, with the interest thereon at the rate of six per centum per annum, according to the tenor, and upon the presentation of the coupons hereunto attached. For the payment of said sum of money and the interest thereon at the times and places and in the manner aforesaid, the
71 faith of the State of Tennessee is irrevocably pledged. This bond being issued in pursuance and by authority of an Act of the General Assembly of said State, passed February the 11th, 1852, "to establish a system of internal improvements in said State," and the acts of said General Assembly amendatory thereof, and the act of December 7th, 1867.

In testimony whereof and in pursuance of the act aforesaid, I, W. G.
72 Brownlow, Governor of the State of Tennessee, have hereunto subscribed my name officially, and caused the same to be countersigned by the Secretary of State, with the Great Seal of the State affixed. Done at the Executive Department in the city of Nash

ville, this 1st day of January, A. D. 1868. 73

W. G. BROWNLOW,
Governor.

A. J. FLETCHER,
Secretary of State.

Color green.

The other two (2) of said bonds are of like tenor in all respects with the foregoing, except that they differ in their numbers, being numbered as follows: 74 3,673—3,866.

All of said bonds are dated on the 1st day of January, 1868.

Nos. 3,673—3,866 are signed.

W. G. BROWNLOW,
Governor.

A. J. FLETCHER,
Secretary of State. 75

Said bonds having forty-eight (48) coupons attached to each bond.

The last coupon attached to each of said bonds, being the coupon first falling due, is in all respects except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

76

The Treasurer of the State of Tennessee will pay to the bearer thirty dollars, in the city of New York, on the first day of July, 1876, being semi-annual interest due on bond No. 3,672.

G. W. BLACKBURN,
Comptroller.

77 All the coupons attached to bonds numbered 3,673—3866, are signed by

G. W. BLACKBURN,
Comptroller.

There are seven (7) overdue coupons upon each of the above numbered bonds, the first coupon having fallen due on the 1st day of July, 1876. The other six of said coupons fall due at intervals of six months from the date of the coupon above
78 mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, John T. Terry, for inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows: on bond No. 3,672, "registered under 9th section of funding act, approved March 17th, 1873."
79 JNO. C. BURCH,
Comptroller.
CHAS. N. GIBBS,
Secretary of State.
Audited Jan. 26, 1874.

On bond 3,673, same, " " " "
3,866, same, " " " "

WILLIAM H. DELANCEY,
Special Examiner.

80

RESPONDENT'S EXHIBIT No. 1. 81

W. H. D. L., Spl. Ex'r.

BOUGHT.

1873.					
Jany.	30	25	Bonds, at		$81\frac{7}{8}$
Feby.	15	85	"	at av'ge	$83.36\frac{2}{8}\frac{5}{5}$
July	23	15	"	"	$81\frac{1}{8}$
	25	2	"	"	$80\frac{7}{8}$
	28	30	"	"	$81\frac{5}{8}$
Aug	2	35	"	"	$81\frac{6}{8}\frac{6}{6}$ 82
	12	25	"	"	$82\frac{1}{8}$
	18	5	"	"	"
	23	12	"	"	"
	20	9	"	"	"
	25	5	"	"	"
		248	"	"	"
Jany. or Feby.		74	"	for coupons above Bds. funded & a fracn. bot. to make a bond.	
		322	"		83

SOLD.

1874.				
Mar.	6	20	Bonds, at	$71-\frac{1}{8}$
	50	30	" "	$71-\frac{1}{4}$
		272		

BOUGHT.

1875.					84
Mar.	31	6	Bonds, at		48
		6	"		$48\frac{1}{8}$
		13	"		$47\frac{5}{8}$
Apl.	1	3	"		$48\frac{1}{8}$
	2	30	"		"
		330	"		

85 RESPONDENT'S EXHIBIT No. 2.

W. H. D. L., Spl. Ex'r.

NEW BONDS.

Series White Bonds, Black Letter D, Funding Bonds, Act 1866, six per cent., mature January, 1892, Nos. 1 to 4941.

7	463	1235	2041	2666	3029	3836
98	471	1236	2078	2718	3030	3839
86 141	496	1237	2079	2843	3031	3939
142						
145	522	1297	2119	2901	3034	4093
148	535	1406	2199	2933	3035	4294
150	640	1449	2215	2970	3036	4311
199	715	1464	2319	3010	3037	4384
239	813	1542	2351	3012	3388	4508
452	1212	1663	2511	3027	3401	4707
	1234	2010	2540	3028	3684	4827
						3339

87

FUNDED COUPONS.

Law identical, same as original.

OLD BONDS.

White Bonds, Black Letter B, issued under Act 1851-2. Nos. 1 to 7908 due in 1892, 7909 to 11806 due in 1898.

68 East Tenn. & Virginia.

88 719 Memphis & Charleston.

1250 East Tenn. & Georgia.

2198 Memphis & Ohio.

2482 do.

2593 McMinnville & Manchester.

2846 do.

2849 do.

2850 do,

2901 Memphis & Ohio. 85
2905 do.
3277 do.
3515 Memphis & Charleston.
3663 Mississippi Central & Tenn.
3836 do. do.
4237 Memphis & Charleston.
5292 Edgefield & Kentucky & L. & N. R. R.
5742 Mobile & Ohio.
6557 Louisville & Nashville.
6620 do. do. 90
6672 do. do.
7518 Winchester & Alabama.
7584 Memphis & Ohio.
7683 do.
7801 Central Southern.
8156 Edgefield & Kentucky & L. & N. R. R.
8390 Memphis & Ohio.
8643 do.
9118 Memphis, Clarksville & Louisville.
9152 Memphis & Ohio. 91
9518 Rogersville & Jefferson.
9573 Memphis, Clarksville & Louisville.
10084 Edgefield & Kentucky.
10762 Nashville & Chattanooga.
10828 Edgefield & Kentucky.
10932 Memphis, Clarksville & Louisville.
11420 Nashville & Northwestern.
11522 do.
11534 do.

92

White Bonds, Series C, Black Letter, six per cent., due in 1898, issued under Act 1851-2.

86 Nashville & Northwestern.
1874 Mobile & Ohio.

93

MEMORANDUM TENNESSEE BONDS—NEW BONDS.

Series Green Bonds, no letter, six per cent., issued under Act 1851 and 2, and Amds. to, Nos. 1 to 8470 due 1892, Nos. 8471 to 10000, due in 1900.

960 Memphis, Clarksville & Louisville R. R.
599 McMinnville & Manchester R. R.
600 Do.
207 Nashville & No. Western.
94 847 Memphis, Clarksville & L. R. R.
848 do.
849 do.
1326 Edgefield & Kentucky R. R.
1329 do.
1507 East Tenn. & Virginia.
1511 do.
1959 Mississippi & Tenn.
2363 Nashville & Northwestern.
2391 do.
95 3132 Edgefield & Kentucky.
3133 do.
2643 Rogerville & Jefferson.
2644 do.
3348 McMinnville & Manchester.
3733 Nashville & Northwestern.
3689 Winchester & Alabama.
3536 do.
4078 do.
4147 Nashville & Northwestern.
96 4288 Cin., Cumberland Gap & Charleston.
4530 Knoxville & Kentucky.
4861 East Tennessee & Georgia.
4866 do.
5014 Cin., Cumberland Gap & Charleston.
5023 do.
$4,066.
5025 do.

5026 Cin., Cumberland Gap & Charleston. 97
5031 do.
5089 do.
5099 do.
5169 Miss. & Tenn. Road.
5340 Memphis & Ohio.
5455 do.
5637 Nashville & Northwestern.
6018 Renewal.
6081 East Tenn. & Virginia Rd.
6107 do. 98
6161 do.
6362 Knoxville & Kentucky.
6628 do.
6662 do.
6670 do.
7109 do.
7417 Knoxville & Charleston.
7505 do.
7667 Winchester & Alabama.
7958 Cin., Cumberland & Charleston. 99
8228 Nashville & Northwestern.
8328 Renewal.
8336 do.
8635 do.
8981 Knoxville & Charleston Rd.
9107 Cin., Cumberland Gap & Charleston.
9810 East Tenn. & West No. Carolina R. R.

Series Green Bonds, letter B, 6 per cent., mature 1900. 100

12 Miss. Central.
18 do.
152 Nashville & Northwestern.
183 do.
185 do.
246 Miss. Central.

101	318	Evansville, Hendersonville & Nashville.
	711	Edgefield & Kentucky.
	752	Miss. & Tenn. Road.
	1286	Knoxville & Kentucky.
	1403	" & Charleston.
	1446	" "
	1447	" "
	1448	" "
	1449	" "
	1450	" "
102	1452	" "
	1499	Edgefield & Kentucky.
	1725	Cin. & Cumberland Gap.
	1726	Cin. & Cumberland Gap.
	1746	Cin. & Cumberland Gap.
	2006	Winchester & Alabama.
	2204	Knoxville & Kentucky.
	2316	do.
	2431	do.
	2434	do.
103	2464	do.
	2683	East Tenn. & West North Carolina R. R.
	2717	Cin., Cumberland Gap & Charleston.
	2603	East Tenn. & W. No. C.
	2605	do.
	2746	Cin., Cumberland Gap & Charleston.
	2826	Southern.
	3222	Nashville & Northwestern.
	3357	do.
	3381	do.
104	3465	do.
	3435	do.
	3672	Memphis & Charleston.
	3673	do.
	3866	do.
	4725	Tenn. & Pacific R. R.

Series Green Bonds, Letter C, 6 per cent., mature in 1900. 105

494
660
725
} To Comptroller.

RESPONDENT'S EXHIBIT NO. 3.—W. H. D. L., Sp'l. Ex'r. 106

To THE COMMITTEE OF TENNESSEE BONDHOLDERS:

I hereby assent to the plan and conditions of the committee's circular of May 17th, 1879.

LIST OF BONDS. 107

COLOR.	LETTER.	NUMBERS.

108

109 RESPONDENT'S EXHIBIT NO. 4.—W. H. D. L., Sp'l. Ex'r.

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing
110 our first mortgage liens against the railroads in Tennessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by
111 Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennes-
112 see," addressed the following argument to the public, which was printed in pamphlet form in 1868:

"The important question for the bondholder now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

"*loaned*. This mortgage, as bondholders must 113
"know, enures to their benefit. For the payment
"of twenty-nine million bonds, which will be the
"entire amount of bonds issued to the roads, in-
"cluding those that may be issued under the recent
"Act of the Legislature, *the bondholders have*
"*as security* roads which, when completed, will be
"nearly two thousand miles in length, and which
"will be worth fully seventy million dollars. In
"addition to that, they have the whole resources
"of the State solemnly pledged to them." 114

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the
"lien in a fiduciary capacity. She holds it *in trust*
"for the benefit of the bondholders. She honor-
"ably has no right to abandon it or surrender it to
"the companies. She ought not to prove faithless 115
"in this *trust*, but maintain and execute it as the
"bondholders understood it and as the people of
"the State understood it. The bondholders are in-
"terested in these resources to pay the bonds they
"hold, and the people are interested in them to see
"that they are not to be taxed to pay interest or
"principal of bonds for which the railroads are
"pledged by the terms of the law."

The assurance of our rightful legal claims against the railroads is strongly fortified by the following 116 facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit the question whether or not

the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation against the railroads. A letter signed by Messrs. Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr. O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to

add that Mr. Southmayd, of the above firm, urged, before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated. 121

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road.

East Tennessee, Virginia & Georgia Railroad, leased lines and branches: 122

East Tennessee & Georgia Railroad	$614,000
East Tennessee & Virginia Railroad	1,218,000
Memphis & Charleston Railroad	830,000
Cincinnati, Cumberland Gap & Charleston Railroad	350,000
East Tennessee & Western North Carolina Railroad	34,000
Total	$3,036,000 123

Louisville & Nashville Railroad Company, and purchased and leased lines:

Main Line	$ 298,000
Memphis, Clarksville & Louisville Railroad	791,000
Memphis & Ohio Railroad	1,176,000
Tenn. & Ala. R. R., Cent. Southern R. R., } Nash. & D. R. R.,	468,000 362,000 124
St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad	645,000
Total	$3,740,000

125	Nashville, Chattanooga & St. Louis Lines:	
	Nashville & Chattanooga	$ 114,000
	Nashville & North-Western	1,385,000
	Winchester & Alabama	457,000
	McMinnville & Manchester	356,000
	Total	$2,312,000
	Mobile & Ohio Railroad	953,000
126	New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad	480,000
	Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad	514,000
	The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding	11,647,000
127	On which there is accrued 23 per cent. interest	2,678,810
	Total due	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

128 The members of the committee are owners to a large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent. com-

promise bonds is already questioned in Tennessee, 129
for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt 130
in the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs and expenses of the litigation. In no event will the 131
bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each as- 132
senting bond, entitling it to any and all advantages resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati. to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & CO.

JOHN T. TERRY,
OF E. D. MORGAN & CO.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

DEPOSITION OF PETER GEDDES.

UNITED STATES CIRCUIT COURT, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company

vs. 2

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing on the part of the complainants, taken before William H. DeLancey, Special Examiner, duly appointed under and pursuant to the 67th Rule in Equity, as amended. 3

52 Broadway,
NEW YORK, Oct. 13, 1879.

Met pursuant to notice.

Present—Mr. ANDREWS, *for Compl'ts*,
Mr. HUMES, *for Resp'ts.*

[Deposition taken subject to all legal objections of both parties.] 4

PETER GEDDES, a witness produced on the part of the complainants, being first duly cautioned and sworn in the above-entitled suit to testify the truth,

5 the whole truth, and nothing but the truth, deposes and says:

Direct examination by MR. ANDREWS:

1 Q. Are you one of the complainants in these causes?

A. I am.

2 Q. Are you an owner and holder of Tennessee bonds?

A. I am.

6 3 Q. Will you produce before the examiner Tennessee bonds of which you are the owner and holder for his inspection and that of respondents' counsel here present?

A. I will.

(Witness produces 6 bonds of the State of Tennessee issued to, and sold by, the East Tennessee & Virginia R.R. Co.

Also 2 bonds of the State of Tennessee is-
7 sued to, and sold by, the East Tennessee & Georgia R. R. Co.

Also 6 bonds of the State of Tennessee issued to, and sold by, the Memphis & Charleston R.R. Co.

Certificates of which last are hereto annexed and marked Complainant's Exhibit No. 1, "W. H. D. L., Spl. Exr.")

(Complainant's counsel offers in evidence certified copies of the receipts given by the
8 R.R. Cos. to the State for bonds, and marked Complainants' Exhibits, and are filed separately under a stipulation of counsel.)

Direct examination closed.

Cross examination by Mr. HUMES:

4 x Q. You have produced 14 bonds issued by

the State of Tennessee; are these bonds your own private property?

A. They are.

5 x Q. When did you buy them?

A. That I can't say.

6 x Q. Have you no idea as to the year in which you bought them?

A. I think I have owned part of them since 1873. I think I have owned some of them since before past-due coupons were funded in 1874.

7 x Q. Did you fund those that you owned at the time of the funding under the Act of 1873?

A. I funded no bonds, but funded the past-due coupons from the bonds I owned at that time.

8 x Q. How many bonds of the State of Tennessee did you own at that time?

A. Twenty thousand.

9 x Q. Did you fund the coupons on them in person, or through an agent; if so, then give the name of that agent?

A. I funded the past due coupons from them in person.

10 x Q. Did you also register the bonds at the time you funded the coupons?

A. The bonds were audited and registered at that time.

11 x Q. How did you purchase the twenty thousand dollars of bonds above given?

A. I purchased them on an order here in New York, sent from Chicago, where I was then living.

12 x Q. To whom was the order addressed?

A. My impression is it was sent to Ward, Campbell & Co., who were brokers in New York then and now.

13 x Q. What did the order direct them to do?

A. I suppose to buy Tennessee old bonds on my account.

13 14 x Q. Did you give them any particular directions as to what particular bonds to purchase?

A. I think I directed them only to buy old bonds.

15 x Q. Did you limit the price?

A. I fancy I did, but I don't recollect much about it.

16 x Q. At what time did you purchase them?

A. I think it was after the passage of the funding Act of 1873, and before the funding of the past due coupons.

14 17 x Q. At what price did you buy them?

A. Eighty per cent. of their par value.

18 x Q. When did you buy those of the bonds you have proved that you did not buy in 1873?

A. I may have bought all of these bonds in 1873; I can't tell now.

19 x Q. Have you not bought Tennessee bonds since 1873? If so, when?

A. I have undoubtedly bought bonds since, but I can't tell exactly when; I bought perhaps in 1874–

15 5–6.

20 x Q. When did you first obtain the information by which you ascertained that six of the bonds proved were issued to the Memphis and Charleston Railroad, six to the East Tennessee and Virginia, and two to the East Tennessee and Georgia Railroads?

A. The first information that I had of the issues to the various railroads of Tennessee was derived from a statement published by Comptroller Penne-

16 backer, of Tennessee, about 1870; as to when I first ascertained as to these particular bonds proved I cannot say.

21 x Q. Did you not ascertain it after you had purchased the bonds?

A. Undoubtedly, yes, that is, after I purchased the first $20,000; as to the others I don't recollect.

22 x Q. Did you not buy those bonds which you

purchased in 1874–5–6 at open sale at the Board of Brokers ?

A. They were undobtedly bought on orders from me ; whether at the Board of Brokers or not I cannot say.

23 x Q. What did those orders call for ?

A. They may have called for old Tennessee bonds or new Tennessee bonds or new series.

24 x Q. In any instance did you ever know the numbers of the bonds until they were delivered to you or your order ?

A. I may have known the numbers before I purchased them.

25 x Q. When you gave orders to buy did you specify particular numbers ?

A. In some instances the numbers were submitted to me before buying.

26 x Q. How about other instances ?

A. In others I bought them on orders without specifying numbers.

27 x Q. What did you specify in those orders.

A. What I desired to buy, either old bonds, new bonds or new series bonds, as I might wish to buy.

28 x Q. Do you own any other State of Tennessee bonds than those you have proved.

A. I do.

29 x Q. What amount ?

A. That I decline to answer.

30 x Q. Are they bonds issued for purely State purposes or loans to railroads ?

A. I believe all my bonds were issued to railroads.

31 x Q. Have you not entered into an agreement with Calvin A. Stevens and others to prosecute these suits on terms set forth in that agreement, if yea, state those terms or produce the agreement ?

A. I have agreed with some others to prosecute

21 the suits, the terms of agreement I decline to give or to produce the agreement.

32 x Q. Did you not, on the 15th February, 1877, draw up with others, sign and forward to Gov. Porter, of Tennessee, the paper, a copy of which is now shown to you ?

A. That is my recollection.

(Paper offered and marked in evidence Respondents Exhibit No. 1. W. H. D. L.,
22 Spl. E'x.)

33 x Q. Did you not write and forward the letter of Feb. 23d, 1877, here shown you ?

A. The penmanship is mine. The letter is from Geddes & Smith, and E. D. Morgan & Co. It was forwarded to Gov. Porter.

34 x Q. In whose handwritings are the signatures "Geddes & Smith," and "E. D. Morgan & Co.?"

A. "Geddes & Smith" is in my handwriting.
23 "E. D. Morgan and Co." I cannot say in whose.

35 x Q. Who procured E. D. Morgan & Co's. signature ?

A. That I can't say. I don't recollect whether I procured it or whether the letter was the joint work of Geddes & Smith, or E. D. Morgan & Co.

(Certified copy of the letter to Gov. Porter offered in evidence and marked "Respts. Exhibit, No. 2. W. H. D. L., Spl. Ex'r.)"

24

36 x Q. I now show you four letters dated respectively New York, August 1, August 23, August 27, August 29, 1877, signed P. Geddes, addressed to Hon. James L. Gaines, Nashville, Tennessee ; are they not all in your own handwriting, and did you not forward them by mail to Mr. Gaines, Comptroller of Tennessee ?

A. No, sir, not to Mr. Gaines, Comptroller of 25
Tennessee. The letter dated August 1, 1877, is addressed to Hon. James L. Gaines, Comptroller, Nashville, and marked "private." The letter dated August 23, 1877, is addressed to James L. Gaines, Comptroller; that of August 27, 1877, is addressed to Hon. James L. Gaines, Nashville, and marked "Private," and that of August 29, 1877, is addressed to Hon. James L. Gaines, Nashville. They are all in my handwriting and were forwarded.

26

[Certified copies are offered in evidence and marked "Respts. Exhibits 3, 4, 5, 6," respectively. W. H. D. L., Sp'l Ex'r.]

Cross-examination adjourned to 14th October, 3 P. M.

37 x Q. Did you not, while R. T. Wilson was negotiating for the purchase of State bonds in 1877 to pay off the Memphis & Charleston R. R. debt to the State of Tennessee, urge him repeatedly to com- 27
plete the purchase of the bonds and finish this settlement with the State?

A I don't know that Mr. Wilson was negotiating for Tennessee bonds at that time for that purpose. I had several interviews with Mr. Wilson about the time that the extra session of the Legislature of Tennessee was called. Mr. Wilson professed to be very desirous that a compromise of the debt of Tennessee should be effected. I was also willing to compromise with the State. At some of our inter- 28
views I may have suggested to Mr. Wilson that it would promote a compromise with the State of Tennessee if the Memphis & Charleston R. R. settled with the State, but I have no recollection of having urged him to make a settlement, on the contrary, refused to either sell or lend him bonds for that purpose.

29 38 x Q. Did not Mr. Wilson inform you at these interviews, or some of them, that he was then trying to obtain bonds of the State of Tennessee with which to make the settlement of said R. R. Co.'s debt to the State?

A. He probably did.

39 x Q. Did he not apply to you to buy or get $1,250,000 of the State bonds from you as agent for a Mr. Smith?

A. I think he did.

30 40 x Q. While the officers of the Mississippi Central road were negotiating for State bonds to settle the debt of that road to the State of Tennessee, did you not have personal interviews with Mr. Fish, Secretary of said Company, and speak approvingly of this settlement then in process of being made?

A. I have no recollection of anything of the sort.

41 x Q. Did you ever present any coupon attached to or from a bond of the State of Tennessee to any railroad company and demand payment of the

31 same?

A. I have never yet done so.

42 x Q. While the several railroads of Tennessee were purchasing bonds of the State with which to settle their debt to the State under the acts of 1869 and 1870, did you ever object, protest against, or oppose in any way said settlements. I include in this interrogatory those of the Memphis and Charleston, the Mississippi Central, and Mississippi and Tennessee railroad companies?

32 A. Not that I recollect of.

Re-direct examination by MR. ANDREWS:

43 Q. State when, where and to what railroad officials of Tennessee you first expressed your assertion of the lien on the railroads belonging to Tennessee bonds?

A. I think first about 1872 or '73 to H. D. Newcomb, 33
President of the Louisville and Nashville R. R., in Louisville ; I expressed the opinion that the Louisville and Nashville Company was liable for the outstanding Tennessee State bonds issued to it, and that the title of the Louisville and Nashville Railroad Company to the Memphis, Clarksville and Louisville Railroad Company I was afraid was not good, the outstanding Tennessee State bonds issued to it being not all paid.

34

(Respondent's counsel objects to the answer as hearsay, and wholly incompetent and illegal.)

44 Q. Who else, if anybody, was present at this interview ?

A. After discussing the matter some time with Mr. Newcombe, he called in the attorney of the company, Russell Houston, I think, who produced what purported to be foreclosure proceedings 35
against the Memphis, Clarksville and Louisville Company, through which he claimed the Louisville and Nashville had derived a good title. I pointed out the fact that the debt had not become due, and that there was no provision for foreclosing until maturity.

(Respondent's counsel objects to the answer as hearsay, and totally incompetent and illegal.) 36

45 Q. Have you not at all times appropriate insisted to the railroad officials of Tennessee with whom you came in contact that the bonds issued to their respective roads were first liens thereon, and that they would in all probability be sued for the enforcement of those liens ?

37 (Objected to as incompetent and irrelevant and leading.)

A. I have repeatedly told officers of Tennessee roads that I believed Tennessee State bonds issued to them to be a first lien, and that they would probably be sued on account of them.

(Objected to as incompetent.)

38 46 Q. Have you not stated to the same effect to R. T. Wilson several years ago?

A. I have emphatically said so to Mr. Wilson, but how many years ago I can't say.

47 Q. Were you present at some conferences between railroad officials and bondholders in New York City, at the time of the special session of the Legislature of Tennessee, in 1877, at which conferences R. T. Wilson was also present?

A. I have no recollection of any conferences be-
39 tween railroad officials and bondholders at that time?

48 Q. Were you present at a meeting about that time at which R. T. Wilson read a statement?

A. I was during part of the time.

49 Q. Was not the subject of these railroad liens discussed at that meeting?

A. I think not.

Re-cross examination by Mr. HUMES:

40

50 x Q. Do you now consent to answer cross-question 31?

A. Same answer as yesterday. I will state the terms. The terms upon which the suits are to be prosecuted are: The bondholders wishing to join shall contribute five dollars in cash for every lien bond, and also one past due coupon from each bond

of that description. Every bondholder desiring to 41
unite is required to sign this agreement.

(Agreement produced. Marked in evidence "Respondent's Exhibit No. 7.—W.H. D.L., Sp'l Ex'r.)

(And also the plan upon which such agreement is based. Circular produced and marked "Respondent's Exhibit No. 8." W. H. D. L., Sp'l Ex'r.) 42

51 x Q. Have you stated fully the terms and stipulations of each and every contract and agreement which you have entered into with others to prosecute these suits?

A. I have stated fully the terms upon which the committee have agreed to prosecute these suits. The only agreement between them and the bondholders.

52 x Q. I repeat the question as not answered? 43

A. I want to know what you mean by prosecuting the suits?

53 x Q. I mean the conduct of the suits in the ordinary way suits are conducted by plaintiffs in Civil Courts?

A. That I don't understand either.

54 x Q. I repeat interrogatory 51. Have you stated fully the terms and stipulations of each and every contract which you have entered into with others to carry on these suits to a final hearing? 44

(Objected to because the witness has answered the question, because on a previous repetition the witness has asked for an explanation of its meaning, and because upon an explanation having been attempted the witness has stated that he did not under-

45 stand the explanation. Under these circumstances any answer is objected to.)

(Further objected to because counsel has stated that he has a copy of the contract he wishes to elicit, and could therefore afford the explanation the witness desires.

A. I have stated fully the terms upon which we have agreed to carry on these suits to a final hearing.

46

(It is agreed that the question shall be certified to Judge Blatchford for decision.

Adjourned to further notice.

NEW YORK, October 23, 1879.
11 A. M.

Present—Counsel as before.

47 PETER GEDDES re-called and examined by Mr. ANDREWS:

55 Q. At the time you wrote the letters to James D. Porter and James L. Gaines, referred to in your deposition, were you an owner of non-lien bonds of the State of Tennessee?

A. I was an owner at that time of what I believed to be non-lien bonds.

56 Q. Is the Mr. Smith of your firm of Geddes & Smith Mr. George Smith of London?

48 A. He is not.

Cross-examination by Mr. HUMES:

57 x Q. In your propositions to the Governor and Legislature of Tennessee for a compromise, and in your letters touching the same subject, did you confine the compromise, or express any limit to the

bonds not issued to railroads. I mean the proposi- 49
tion of compromise which is exhibited with your deposition now being taken, and which proposition is dated February, 1877?

A. No.

58 x Q. Did you not approve of and sign the subsequent proposal for reducing the principal?

A. I think I did not sign it, I may have subsequently approved it.

59 x Q. In any correspondence or action of yours to produce a compromise, did you limit the terms 50
to bonds not issued to railroads?

A. I think not.

60 x Q. Did you not, when you signed the proposition above mentioned, dated February 15, 1877, and your correspondence herewith filed, with Governor Porter and James L. Gaines, own Tennessee bonds issued to railroads, as well as those not issued?

A. I believed I owned some bonds issued to railroads. 51

61 x Q. Have you entered into any agreement or contract touching the prosecution of these suits with any persons other than the contracts you have already exhibited with this deposition?

A. Do you mean the contract with our counsel?

62 x Q. I mean with them or any other person or persons?

(Objected to by counsel for complainants as to that portion which refers to counsel as 52
immaterial and irrelevant, and any answer objected to in that respect until the Court can rule on the competency of the evidence.)

A. I decline to answer as to counsel. We had no agreement with any other person or persons other than that exhibited.

53 63 x Q. You say in your last answer that you have no agreement except those exhibited with any other person or persons; do you use the word person or persons in the above answer as excluding or including your counsel?

(Objected to upon the ground that the witness had declined te answer as to counsel.)

54 A. I decline to answer as to counsel, and as to other persons I have already answered.

(Counsel for defendants reserve the right to submit to the Court the competency of the questions declined to be answered by this witness.)

P. GEDDES.

Subscribed and sworn to before me, }
23d day of October, A. D. 1879. }

55 WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee to take the testimony and proofs of both parties in the above-entitled suit in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my
56 office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence, and that the exhibits hereto annexed and marked Complainant's Exhibits No. 1, and Respondent's Exhibits Nos. 1, 2, 3, 4,

5, 6, 7 and 8, were introduced in evidence in said 57
cause during the taking of said deposition.

Dated Oct. 23, 1879.

WILLIAM H. DELANCEY,
Special Examiner.

58

In the case of CALVIN AMORY STEVENS, *et al.*, on behalf of the holders of Internal Improvement Bonds, of Tennessee, issued to the Memphis & Charleston Railroad Company,

versus

59

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, *et al.*

IN THE UNITED STATES CIRCUIT COURT,

For the Western District of Tennessee,

I hereby certify that there were produced before me during the taking of the deposition of Peter 60
Geddes in this cause, six (6) Tennessee bonds, each bond being for the principal sum of one thousand dollars, and bearing the impression of the great seal of the State of Tennessee on the face thereof.

A true and exact copy of one of said bonds is as follows:

61 COMPLAINANT'S EXHIBIT No. 1.

W. H. D. L., Spl. Exr.

M. UNITED STATES OF AMERICA. M.

No. 419. B.

STATE OF TENNESSEE.

Know all men by these presents, that the State of Tennessee acknowledges to owe to
62 or order, one thousand dollars, lawful money of the United States, which sum the said State promises to pay in the City of New York, on the 1st day of January, 1892, with interest at the rate of six per cent. per annum, payable semi-annually, according to the tenor, and upon the presentation of the coupons thereto attached. For the performance of all which the faith of the State of Tennessee is hereby irrevocably pledged, as this bond is issued in pursuance and under the provisions of an Act of
63 the General Assembly of said State, passed at its session of 1851-2.

In witness whereof I, W. B. Campbell, Governor of said State, have hereunto signed my name and caused the same to be countersigned by the Secretary of said State, and the Great Seal of said State to be hereto affixed, at Nashville, this
64 1st day of January, 1852.

W. B. CAMPBELL, *Governor.*

W. B. A. RANNEY, *Secretary of State.*

$1,000. $1,000.

The other five (5) of said bonds are of like tenor in all respects with the foregoing, except that they

differ in their numbers, being numbered as follows: 65
491, 673, 692, 1,559, 3,409.

All of said bonds are dated on the 1st day of January, 1852, except number 1,559, which is dated on the first day of January, 1855, and number 3,409, which is dated on the 1st day of January, 1856.

Nos. 491, 673, 692, are signed W. B. Campbell, Governor; W. B. A. Ranney, Secretary of State.

No. 1,559 is signed Andrew Johnson, Governor; W. B. A. Ranney, Secretary of State.

No. 3,409 is signed Andrew Johnson, Governor: 66
F. N. W. Benton, Secretary of State.

All of said bonds having thirty-two coupons attached to each bond.

The last coupon falling due is in all respects, except as hereinafter stated, similar and like unto the following true and exact copy thereof:

$30. $30.

The Treasurer of the State of Tennessee will pay the bearer thirty dollars, in the City of New York, 67
on the first day of July, 1876, being the semi-annual interest then falling due on bond No. 419.

ARTH. R. CROZIER, *Comptroller.*

All the coupons attached to bonds numbered 491, 673, 692, 1,559, 419, are signed Arth. R. Crozier, Comptroller.

Coupons attached to bond No. 3,409, are signed by J. C. Luttrell, Comptroller.

There are seven overdue coupons upon each of 68
the afore-numbered bonds, the first coupon thereof having fallen due on the 1st day of July, 1876. The other six of said coupons fall due at intervals of six months from the date of the coupon above mentioned.

All the aforesaid bonds with the coupons attached thereto, were left by the witness, Peter Geddes, for

69 inspection by me and the solicitor for the respondents then and there present, and were inspected by me and by him.

The endorsements on said bonds are as follows: on bond No. 419, "registered under 9th Section of Funding Act, approved May 17, 1873, Jno. C. Burch, Comptroller; Chas. N. Gibbs, Secretary of State."

			Audited Mar.	4, 1874.
On bond No. 491,	same	"	"	"
70 673,	"	"	Feb.	11, "
692,	"	"	"	21, "
1,559,	"	"	"	11, "
3,409,	"	"	Sep.	15, 1873.

In addition to the foregoing, the following endorsement is upon bonds Nos. 419, 491:

"Assigned and transferred by E. Cramer to the State Treasurer of the State of Wisconsin, in trust for the State Bank of Wisconsin.

71 Madison, Apr. 14th, 1853.

J. S. BAKER,
Bank Compt'r.

CHAS. T. KVELIN,
State Treasurer.
By CARL HABICH,
Asst. State Treasurer.
WILLIAM H. DE LANCEY,
Special Examiner.

72

RESPONDENT'S EXHIBIT No. 1. 73

W. H. D. L., Spe'l Ex'r.

NEW YORK, February 15, 1877.

To his Excellency JAMES D. PORTER,

Governor of the State of Tennessee.

Sir: On the 26th of December last, we had the honor of addressing to your Excellency a letter on the disordered condition of the public debt of the State of Tennessee, of which we are owners and the 74 representatives of owners of a large amount, and of conveying to you in same an expression of our confidence and belief that a permanent adjustment of the debt on a basis equitable to the holders of it and honorable to the State was practicable, begging that your excellency would recommend to the Legislature to appoint a commission to come to this City and confer with the creditors of Tennessee, with the view of bringing about such an adjustment. 75

We now have the honor to acknowledge the receipt of communication to us severally, addressed by your Excellency, accompanied by a resolution of the Legislature of Tennessee, approved on the 27th January ultimo, in which the holders of the public debt of the State are invited to submit to the General Assembly, through your Excellency, propositions for an adjustment of said debt, and at the same time to most respectfully express to your Excellency, and through you to the Legislature and 76 people of Tennessee, our great regret and disappointment that the Legislature did not think it expedient to appoint a commission to come to New York to confer with the creditors of the State, for the purpose mentioned; because such a conference we still believe would have developed a plan of adjustment that, while doing equity to the

77 creditors of Tennessee, would, by bringing her revenues and finances into harmonious and easy working order, restore her credit and again place it firmly on the high and solid ground it once occupied, offer encouragement to capital to seek employment within her borders in the development of her unsurpassed natural resources, and result in the greatest good to the people of the State generally, enabling them to transmit to posterity together with the good name which they had inherited, a heritage
78 far richer than had come down to them from their fathers.

We have carefully considered the liabilities and resources of Tennessee; we know that her great wealth of mine, field and forest are only in the infancy of development.

We know also how much the future development of the vast but now comparatively latent resources of the State depends upon a restoration of her credit and the re-establishing of her
79 financial system upon a sound basis; and knowing, moreover, that public creditors of the State would be benefited, in common with the people of Tennessee, by a restoration of her credit and by giving her a healthy fiscal system, we beg leave to submit to your excellency, and through you to the legislature and people of Tennessee, the following propositions as to what can be done by the people of Tennessee, with the co-operation of their public creditors, for the immediate adjustment of their
80 public debt and for its ultimate extinguishment in an easy, gradual and feasible way—a way which, if adopted, we feel very sure we hazard nothing in saying will be productive of the most beneficial results to the people of Tennessee.

It will be observed how essential to the success of the plan we submit for present adjustment and ultimate extinguishment of the debt will be the cor-

dial co-operation of both debtor and creditor, and 81
to what extent we propose that the public creditors
of Tennessee shall contribute to its success.

We propose:

1st. That the revenue laws of the State shall be amended so that the collection of taxes may be assured at the time or times when they become due, and that at the smallest possible cost to the tax-payers.

82

2d. That the reforms proposed and recommended to the legislature by your excellency, in regard to the cost of county criminal prosecution, be enacted into a law.

3d. That the expense of the State Government be reduced to as low figures as is consistent with the maintenance of its dignity.

4th. That the present rate of taxation be maintained, and that the other sources of revenue be not diminished. 83

5th. That the State levy annually a special tax of one mill on the dollar of taxable property, the proceeds of which in every year, together with any surplus revenue, shall be used in the purchase, cancellation and destruction of the new issue of bonds which it is proposed herein to issue for existing bonds snd past-due coupons of July 1, 1877. 84

6th. That the Legislature pass a law authorizing the funding of all outstanding bonds of the State, of all past due coupons thereon, and of the coupons which will fall due on July 1, 1877, into new bonds of the State, bearing date July

85 1, 1877, and having fifty years to run to maturity, bearing interest for a period of five (5) years from their date at the rate of three (3) per cent. per annum; for a second period of five (5) years thereafter, interest at the rate of four (4) per cent. per annum; for a period of five (5) years from the termination of the last mentioned period, interest at the rate of five (5) per cent. per annum, and thereafter and until maturity and payment, interest at the rate of six (6) per
86 cent. per annum; interest on each bond to be payable semi-annually, on January 1 and July 1, in every year from and after its date, and the coupons evidencing it to be receivable by the State for all taxes and dues payable to the State, and bonds to be $100, $500, and $1,000 each.

The debt of the State, as may be readily ascertained, will be within her control and easy power to
87 manage and protect from the start, if, as we sincerely hope may be the case, the plan herein outlined is availed of, and we may add that our aim has been to make it within the easy power of the people of Tennessee to avail of it.

As will be perceived by your Excellency, the Legislature and people of Tennessee, the public creditors of Tennessee in acquiescing in this proposed plan of co-operation between them and the people of Tennessee for restoring the credit of the State and ulti-
88 mately extinguishing her public debt, will voluntarily relinquish about seven millions of their claims against Tennessee, an amount equal to about one-third of the entire amount of the public debt.

On the other hand we propose that the people of Tennessee adopt the easiest and simplest mode which we can conceive of for the ultimate extinguishment of their entire public debt, a mode which, while it will

only produce the very moderate annual sum of $268,- 85
000 at the present low valuation of property, will, by its silent but sure work, pay off the debt completely, while by its operation it will so reduce the amount upon which, under this plan, interest will require to be paid, that at the expiry of each period for an advance in the rate, the reduced amount for which interest will have to be provided, and the certain increase in the value of property, will together work to make the present rate of taxation quite sufficient to meet all demands upon the 90
State.

During the first fifteen years of the currency of the proposed new issue of bonds, we estimate that the proposed special tax for its ultimate payment will pay off between five and six millions of dollars in bonds, allowing 20% of the tax for its collection, and the expense of buying bonds with the proceeds.

When it is considered that this can be accomplished at so small an annual charge to the people 91
of Tennessee, and that such certain beneficial results to them are sure to follow, we have the greatest confidence that their loyalty to Tennessee, their determination to preserve and perpetuate her honor and good name will be sufficient to induce them to make the manly effort to that end of unitedly raising a one-mill tax on their property annually.

We are quite well aware of the partial failure of the crops in Tennessee in the years 1873 and 1874, and of the depressed condition of business, and of 92
all industries in the State, but throughout the country there exists the same depression—stagnation.

In full recognition of this depression and stagnation, which there is every reason for believing will soon give place to better times, we have in the plan herein submitted for a re-arrangement of the finan-

93 ces of Tennessee made her obligations within her means and evident ability to meet now.

With the existing rate of taxation, and the proposed special tax for the extinguishment of the debt, which together will make a five-mill tax, it may not be improper to compare the rate of taxation in the States which border on Tennessee:

In Arkansas	the rate is	10	mills,
Mississippi	"	$6\frac{1}{2}$	"
Alabama,	"	7	"
94 Georgia,	"	5	"
North Carolina	"	$3\frac{3}{10}$	"
South Carolina	"	12	"
Virginia	"	5	"
Kentucky	"	$4\frac{1}{2}$	"

In conclusion, we beg to express to your Excellency, and through you to the Legislature and people of the great State of Tennessee, our confidence that all will unite with us in this effort to make it 95 possible to avail of the proposed co-operation of the creditors of Tennessee to bring about so desirable a result as the re-establishment of the credit on a plan so favorable as we have herein outlined, and we have the honor to be

Your obedient servants,

GEORGE SMITH, of London, England,
by Geddes & Smith, agents, &c.

BROWN BROTHERS & Co., Agents.

96 DREXEL, MORGAN & Co., Agents.

E. D. MORGAN & Co.,
Agents and owners.

JAMES G. KING'S SONS,
as agents for bondholders.

WARD, CAMPBELL & Co., Agents.

G. W. STANTON, Jr.

P. GEDDES.

We concur in the foregoing. 97

CALVIN STEVENS,
by C. Amory Stevens, att'y.
J. V. CLARK, Pres't, Chicago,
per Thos. G. Robinson.
WM. G. CREAMER, 96 John st.
CHAS. J. HINE, New York City.
A. ISELIN, as Att'y, New York.
W. R. JENKINS, New York. 98
MRS. JOSEPHINE S. NEWCOMB,
by H. Pomeroy, Att'y,
54 Broad street.
GEORGE WATSON, Chicago,
per James H. Smith.
JNO. H. MACEY, Pres't.
HENRY E. JOHNSTON, Baltimore.
JOHNSTON, BANKHEAD & Co.,
Baltimore, Agents.
THOMAS F. ANDREWS, Baltimore. 99
M. ABRAMS, Baltimore.
WILLIAM DE GORY, Baltimore.
SAMUEL L. PETERS, Baltimore.
WILSON, COLSTON & Co., Agents,
Baltimore.
JOHN S. GITTINGS, Baltimore.

RESPONDENT'S EXHIBIT NO. 2.

W. H. D. L., Sp'l Ex'r. 100

NEW YORK, Feb. 23d, 1877.

His Excellency,
JAMES D. PORTER,
Governor of Tennessee:

SIR: We beg leave to call your attention to the enclosed telegram to the *New York Herald*, from

its Nashville correspondent, cut from this morning's issue of the *Herald*, and to confirm our dispatch to you of this morning by telegraph in relation thereto, as follows:

"Proposition from large and influential New "York and Baltimore bondholders expressed to "you on Wednesday, and should be received to-"day. Bondholders here know nothing whatever "of a meeting or of resolutions reported in *Herald* "to-day as having been sent to you, and by you "transmitted to legislature, with a special message.

"This may be a movement designed to destroy "or embarrass any proper adjustment."

No meeting of bondholders of Tennessee, so far as we are aware or can ascertain, has either been called or held in this city. Neither have we heard at any time of a purpose to call or hold such a meeting, nor of a purpose or desire on the part of real holders of Tennessee bonds to take any action whatever, outside of what has been taken through and in the communication which we, with others, had the honor to address to you under date the 15th current. It could hardly be possible to call or hold a meeting here of Tennessee bondholders without our knowing or hearing about it. Such being the case, we thought it our duty to telegraph to your Excellency as we did this forenoon. It occurred to us that possibly an attempt to mislead your Excellency and the people of Tennessee as to the sentiments and wishes of the real holders of the indebtedness of the State had been made, akin to the attempt made last year to create a false impression, through a letter to the State Treasurer, to which the name of one of the Astors had been forged.

The debtors of the State, with all of which she has been extremely liberal, even to the injury of her own credit many here believe, are supposed to

be antagonistic to the consummation of any plan for 105
the restoration of Tennessee credit now, the complete prostration of which, it is supposed, would be for their immediate pecuniary advantage. This view, if entertained by any of the debtors of the State, is unsound. For, with every decline in the credit of the State, their credit inevitably suffers.

But, to remove this cause of a real or apparent antagonism between the debtors and creditors of the State, and also to remove—which is of immediate and great importance—an 106
obstacle which is calculated to prevent or, at least, hinder the people of Tennessee and their public creditors from coming to an agreement with respect to what each should do to restore the credit of the State, and place it on a solid basis, we would respectfully suggest to your Excellency that the debtors of the State be required, within a reasonable time, say by or before July 1st, 1877, to pay off every obligation due from them to the State as now they may do, after which time only such ad- 107
vances as were specifically made to each to be receivable in payment or cash; this is to apply to principal and interest.

We submit to your Excellency whether there would be any hardship or injustice in requiring this, and assure you that the creditors of the State would regard such a step as one taken in the right direction; and

We remain

Your Excellency's Ob't Serv'ts, 108

GEDDES & SMITH.
E. D. MORGAN & CO.

The views above given, we beg to add, are for your own personal consideration.

G. & S.

I, WILLIAM H. DELANCEY, special examiner, do hereby certify that an original letter, of which the foregoing is a true and exact copy, was produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and was submitted to him and acknowledged by him, as appears in his deposition, to which this is annexed as an exhibit. I further certify that the foregoing copy is a copy of the whole of such original letter.

New York, October 13th, A. D. 1879.

WILLIAM H. DELANCEY,
Special Examiner.

RESPONDENT'S EXHIBIT No. 3.

W. H. D. L., Sp'l Ex'r.

(Private.) NEW YORK, Aug. 1, 1877.

Hon. JAMES L. GAINES,
Comptroller,
Nashville.

Dear Sir :—I think that I may now safely say to you confidentially that the parties in interest will be prepared to pay off the debts of the Mississippi Central to your State just as soon as it is safe for them to do so.

I was amused when I read in the American newspaper the other day the very brief notice of the payment of the debt of the Memphis and Charleston road to the State, which it published. A stranger would conclude that it was published solely to account for your being in New York, about which the public might be concerned, to assure the people of Tennessee that you were not here to pay off the State debt, or anything of that kind.

I have not yet heard from Mr. Smith, and am 113
therefore not able to indicate what view he may take of the conditions upon which Governor Porter says he will call an extra session of the Legislature. I have, however, not changed my own views as to what should be done, but I am more firmly convinced than ever that the proposition of the bondholders should be accepted, or one its equivalent, which I think might be gotten up, offering to settle at say 75 % of principal and interest in 6% bonds, coupons receivable for all taxes and dues to the State. If 114
any hope were held out that a settlement can be effected at the equivalent of our proposition, say 75c., I would do my best to get all the principal bondholders to make a proposition to settle at that, and I think that with careful handling it could be carried. Of course there are always some who hold back, but I think that the great majority would take 75 % under the name of the equivalent of their proposition already made.

The debts of the railroads to the State may now 115
be regarded as practically settled. What remains is simply a question between debtor and creditor.

Freed from the complications which grew out of these railroad debts the discussion of the debt question will be very clear and simple henceforward.

If a few of you men of influence and character would unite in an effort to bring about a compromise on the basis of 75 % I think it could be effected satisfactorily to all, while it is very doubtful if an acquiesced in settlement at a lower figure would 116
ever be regarded as other than a forced one by the public and the bondholders.

The intervention of the so-called arbiters of the Clearing House was the most unfortunate thing that could have happened.

Personally I have worked hard to save the remnant of Tennessee's once good credit, and I make

117 this last effort to complete the job. If it fails, let it be so. Posterity will ever regret a blunder made now.

If you think so advisable you may convey to the Governor at your convenience the substance of what I have said, and let me know what he may have to say in reply.

Very truly yours,
P. GEDDES,
P. O. Box 936.

118

RESPONDENT'S EXHIBIT No. 4.

W. H. D.L., Sp'l Ex'r.

NEW YORK, Aug. 23, 1877.

JAMES L. GAINES, Esq.,
Comptroller.

119 *Dear Sir :*—I duly received your esteemed favor of the 8th current.

Since then I learn that the Mississippi and Tennessee Railroad Company have voted to pay off their debt to Tennessee. This practically settles up all advances made by the State to railroad companies, and reduces the whole State debt question to one between the people of Tennessee and the investors in their public debt. What the latter will agree to do I can not say. They may or may not adhere to
120 their pro position of last February.

If the people of Tennessee under any circumstances are liable to do anything disgraceful in regard to their public debt, or permit anything of that kind to be done, of which you seem to entertain fears, should a settlement not be come to this year, and the debt question become one of the issues in the State canvas of next summer, the inquiry forces it-

self upon the bondholders, of how much value 121
would the reduced debt of such a people be to the holders of it ?

This is a very serious question in view of the fears you express, and of what I will now only characterize as the extraordinary legislation of last winter. I shall be happy to hear from you in reply at your convenience.

Mr. Smith has been travelling since the beginning of July, and hence we do not hear from him.

I am, 122
Very truly yours,
P. GEDDES,
P. O. Box 936.

RESPONDENT'S EXHIBIT No. 5.

W. H. D.L., Spe'l Ex'r.

(Private.) NEW YORK, August 27, 1877. 123

HON. JAMES L. GAINES,

Nashville.

My Dear Sir: I have just had an interview with Mr. Osborne, who reports that in thirty days the parties in whose interest the Mississippi Central was bought in the other day will receive a confirmation of their purchase. It is quite well understood here that so soon as they can do so with safety, they will pay off the lien of Tennessee on the Miss. 124
Central, and that they now think they can safely pay it off sixty days hence.

There is thus little doubt that the last of Tennessee's advances to the railroads within her borders will be paid off early in the fall, thus freeing her and her creditors too, for that matter, from a very troublesome disorder.

125 Although you do not in your note of the 8th current give much reason to hope that a settlement of Tennessee's debt on any other than the Coe Committee's plan is now practicable, I still cling to the belief that the honest citizens of Tennessee who must be still in the majority, would much prefer to pay the State debt *in full*, if some plan were submitted which would make it clearly possible for them to do so.

The outstanding bonds of Tennessee are mainly
126 held by investors, by trustees, and Trust Institutions. The "margins" of speculators in and out of Wall street have long ago disappeared, and the bonds upon which they were held been sold.

Now investors, and parties, and institutions holding in trust, prefer much any reasonable reduction of the rate of interest their investments will produce to a reduction of the principal.

For the past four years they have been receiving lower rates of interest and smaller dividends on
127 their investments than they had been accustomed to. Many of them, judging by the large subscriptions to government four per cents. recently, have come apparently to the conclusion that lower rates of interest than formerly prevailed will hereafter permanently prevail. This is the mood in which they now appear to me to be, and it has suggested the idea that advantage might possibly be taken of so favorable a time and circumstances by the friends of Tennessee to bring about a compromise
128 of the rate of interest on her debt which would enable her with ease to pay it all off.

I will not discuss her ability to pay her debt, but will assume it and pass on to my suggestion, which is as follows:

The State to issue new bonds for the principal and past due interest of her existing bonds, to bear interest at 4 (four) per cent. per annum, payable

semi-annually, January 1 and July 1, in each year, 129
coupons to be attached to the bonds representing each payment of interest, to be receivable by the State for all taxes and dues to the State, and to be free from taxation of any kind in the State. The bonds themselves to be payable fifty or one hundred years hence, and redeemable by the State at any time after six month's notice that the State is prepared to pay them.

The bondholders of Tennessee may object to making such a proposition of compromise; but if I get 130
from you and the Governor encouragement that if such a proposition were made by the holders of more than half the debt, it would be accepted, I will exert myself with Mr. George Smith and other well known large holders to make it.

Firmly convinced as I am that a settlement in full, if by any possibility it can be accomplished, will be of immense present and future advantage to Tennessee and Tennesseeans, I hope that you will
induce Governor Porter and the other friends of 131
State credit to give my suggestion careful consideration.

I do not dare to mention it to any one yet, but will set the wheels in motion if hope of acceptance is held out, and will, if necessary, go to Nashville for the purpose of an interview with the Governor and yourself.

If the friends of Tennessee in Tennessee will extend to her a helping hand, I think that she can
still be restored and her honest pride saved. 132

Let me hear from you on receipt and write further afterward.

Truly yours,

P. GEDDES.

133 RESPONDENT'S EXHIBIT No. 6.

W. H. D. L., Spl. Exr.

NEW YORK, Aug. 29, 1877.

HON. JAMES L. GAINES,
Nashville, Tenn.:

My Dear Sir:—I thank you for your favor of 25th current, and for the information and suggestion therein communicated.

Seeing by the morning papers that the Governors
134 were to meet yesterday at the Continental Hotel, Philadelphia, I telegraphed to Governor Porter there asking him where a letter would reach him today, and after hearing from him wrote him with a copy of my last letter to you, asking him to let me have the benefit of his views thereon in advance of his arrival here, and saying that if agreeable to him I would with pleasure call upon him when he comes to New York.

In case Tennessee wants to pay off her debt it
135 will be of great advantage to her to arrange for a low rate of interest on it. Bonds bearing a low rate of interest can be with greater ease or at lower cost bought for a sinking fund than can bonds bearing full rates.

This is a point I had in view when we made our proposition of compromise, and one which I hope will have some weight yet with you.

Yours truly,
P. GEDDES.

136

I, WILLIAM H. DELANCEY, Special Examiner, do hereby certify that four original letters, of which the foregoing are true and exact copies, were produced before me on the examination of Peter Geddes, a witness produced on the part of the complainants, and were submitted to him and acknowledged by him as appears in his deposition to which they are

annexed as an Exhibit. I further certify that the 137
foregoing copies are copies of the whole of such original letters.

New York, October 13th, 1879.

WILLIAM H. DELANCEY,
Special Examiner.

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RESPONDENT'S EXHIBIT No. 7.

W. H. D. L., Sp'l Ex'r. 138

To THE COMMITTEE OF TENNESSEE BOND-HOLDERS:

I hereby assent to the plans and conditions of the Committee's Circular of May 17th, 1879.

LIST OF BONDS.

COLOR.	LETTER.	NUMBERS.

139

140

141 RESPONDENT'S EXHIBIT NO. 8.—W. H. D. L., Sp'l. Ex'r.

OFFICE OF COMMITTEE OF
TENNESSEE BONDHOLDERS,
No. 31 Nassau Street.

P. O. Box 936. NEW YORK, May 17, 1879.

To the Holders of Tennessee Bonds:

In our last circular we informed you that the committee was considering the best means for enforcing
142 our first mortgage liens against the railroads in Tennessee. After full deliberation, with advice of counsel, and with the approval of the following prominent houses interested: Brown Brothers & Co., Maitland, Phelps & Co., Ward, Campbell & Co.; and of the Presidents of the Seaman's Savings Bank, and the Globe Mutual Life Insurance Co. of New York; and of large individual holders in New York, Baltimore, Philadelphia and Chicago, we have decided to adopt the suits lately instituted by
143 Mr. C. Amory Stevens. Prompt action on the part of the bondholders will enable us to bring these suits to trial during the ensuing summer.

It may be well for us to give some of the considerations that make us confident of a successful enforcement of the lien conferred on our bonds by the distinct language of the Tennessee Statutes. While Tennessee bonds of the new issue were being offered for sale in behalf of the railroads of the State, S. Watson, "agent for the State of Tennes-
144 see," addressed the following argument to the public, which was printed in pamphlet form in 1868:

"The important question for the bondholder now "is, What security have I for the payment of the "principal and interest of my bond? The State "debt proper is only about four millions. The "railroads and all their rolling stock are mortgaged "to the State to secure the *payment of bonds*

"*loaned.* This mortgage, as bondholders must 145
"know, enures to their benefit. For the payment
"of twenty-nine million bonds, which will be the
"entire amount of bonds issued to the roads, in-
"cluding those that may be issued under the recent
"Act of the Legislature, *the bondholders have*
"*as security* roads which, when completed, will be
"nearly two thousand miles in length, and which
"will be worth fully seventy million dollars. In
"addition to that, they have the whole resources
"of the State solemnly pledged to them." 146

Again, in 1868, when the Legislature of Tennessee sought to impair our securities, Gov. Brownlow, then chief executive, sent a message to that body remonstrating against the proposed measures in the following emphatic language:

"The State, in point of honor and fact, holds the
"lien in a fiduciary capacity. She holds it *in trust*
"for the benefit of the bondholders. She honor-
"ably has no right to abandon it or surrender it to
"the companies. She ought not to prove faithless 147
"in this *trust*, but maintain and execute it as the
"bondholders understood it and as the people of
"the State understood it. The bondholders are in-
"terested in these resources to pay the bonds they
"hold, and the people are interested in them to see
"that they are not to be taxed to pay interest or
"principal of bonds for which the railroads are
"pledged by the terms of the law."

The assurance of our rightful legal claims against the railroads is strongly fortified by the following 148 facts:

In April, 1878, the committee addressed a circular to the bondholders notifying them that it was about to enforce this lien. We petitioned to be heard in the Mobile and Ohio case then pending on appeal before the Supreme Court of the United States. In that suit the question whether or not

149 the holders of Tennessee bonds had a first mortgage lien upon railroads in that State, was clearly presented. The cause was fully argued by several counsel for the railroad company as well as by our counsel, and the Court took the case under advisement. Some time after, while we were confidently awaiting a decision in our favor, we were surprised to learn that the railroad company had settled the case with the party to the record in that suit—that stipulations had been filed in the office of the Clerk
150 of the Supreme Court—that copies had been sent to the several Judges of the Supreme Court—and, in short, that everything had been done by the railroad officials which it was possible to do to forestall a decision in the case. As we were not actual parties to that cause, we could not control the matter in any way so as to prevent a settlement. But, surely, we could not require any stronger evidence that the railroad companies were convinced of their own defeat. Otherwise they would have gladly
151 welcomed a decision which would have relieved their property from the burden of this lien, and would have done everything in their power to have secured a final adjudication in their favor instead of preventing a decision.

We call your special attention to the accompanying opinion of Mr. Charles O'Conor. It was given under a deep sense of moral responsibility in course of advice sought by a bondholder to enable him to determine whether or not to embark in a litigation
152 against the railroads. A letter signed by Messrs. Evarts, Southmayd & Choate, in which it is stated that they have not time to prepare an opinion against us, has been circulated in the interest of the railroads. That letter bases its conclusions on the Minnesota case, which, we are informed by Mr. O'Conor, bears in our favor so far as it is at all applicable to the Tennessee case. It is sufficient to

add that Mr. Southmayd, of the above firm, urged, before the Supreme Court, that same decision in the Minnesota case as a precedent in favor of his clients; but the effect was not convincing enough to induce those clients to refrain from a settlement of the case as before stated. 153

We append a list of roads on which Tennessee State bonds are first mortgage liens, and the amount of bonds outstanding against each road.

East Tennessee, Virginia & Georgia Railroad, leased lines and branches: 154

East Tennessee & Georgia Railroad	$614,000
East Tennessee & Virginia Railroad	1,218,000
Memphis & Charleston Railroad	830,000
Cincinnati, Cumberland Gap & Charleston Railroad	350,000
East Tennessee & Western North Carolina Railroad	34,000
Total	$3,036,000

155

Louisville & Nashville Railroad Company, and purchased and leased lines:

Main Line	$ 298,000
Memphis, Clarksville & Louisville Railroad	791,000
Memphis & Ohio Railroad	1,176,000
Tenn. & Ala. R. R., Nash. & D. R. R.,	468,000
Cent. Southern R. R., Nash. & D. R. R.,	362,000
St. Louis & South-Eastern Railroad Company, on account of Edgefield & Kentucky Railroad	645,000
Total	$3,740,000

156

157	Nashville, Chattanooga & St. Louis Lines:	
	Nashville & Chattanooga	$ 114,000
	Nashville & North-Western	1,385,000
	Winchester & Alabama	457,000
	McMinnville & Manchester	356,000
	Total	$2,312,000
	Mobile & Ohio Railroad	953,000
158	New Orleans, St. Louis & Chicago Railroad on account Mississippi Central and Tennessee Railroad	480,000
	Knoxville & Ohio Railroad Company on account of Knoxville & Kentucky Railroad	514,000
	The above amounts and some issues to smaller roads make an aggregate of railroad issues made by the State of Tennessee, and which are still outstanding	11,647,000
	On which there is accrued 23 per cent.	
159	interest	2,678,810
	Total due	$14,325,710

Bondholders will please note that "New" bonds, issued to Tennessee railroads, and "Funding Series" bonds, not included in the above list, issued in payment of interest which accrued on railroad bonds under the Funding Acts of 1866, 1868 and 1873, are also statutory liens upon the railroads.

160 The members of the committee are owners to a large amount of bonds that are not liens on the railroads, which they do not propose to fund into the 50 and 4 per cent. bonds offered. They believe that the enforcement of the railroad liens will bring about a much better settlement than is now proposed. It is our duty to inform you that the legality of the proposed issue of the new 4 per cent. com-

promise bonds is already questioned in Tennessee, 161
for want of sufficient acceptances to authorize the submission of the proposed settlement to popular vote, as required by the Act of the last General Assembly.

Holders of North Carolina State bonds, issued in aid of the North Carolina Railroad Company, will recollect how that State made an unsuccessful attempt to deprive such bondholders of the lien originally intended for their security. A like attempt 162
in the State of Indiana, in the case of the Wabash and Erie Canal, was also unsuccessful, and the lien decided in favor of the bondholders.

Bondholders wishing to secure the benefits resulting from this litigation can do so on the following conditions, to wit: by depositing with the committee five dollars per lien bond in cash, and one past due coupon from each bond of that description. This will be required to defray the necessary costs
and expenses of the litigation. In no event will the 163
bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each as-
senting bond, entitling it to any and all advantages 164
resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

157	Nashville, Chattanooga & St. Louis Lines:	
	Nashville & Chattanooga	$ 114,000
	Nashville & North-Western	1,385,000
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and expenses of the litigation. In no event will the bondholders be called upon for any further assessment, nor do they incur any personal liability by uniting in this plan. Should any surplus funds remain in the hands of the committee after all expenditures have been provided for the same will be returned to bondholders *pro rata*. Those who do not comply with the aforesaid conditions will be excluded from the benefits derived from the action of the committee. A certificate will be issued to each assenting bond, entitling it to any and all advantages 164
resulting from these legal proceedings, and specifying the railroad company bound for the payment of the bond. An arrangement for calling these certificated bonds for dealings in them on the New York Stock Exchange will be made.

When it is considered that the enforcement of

these liens should make the great mass of the internal improvement bonds worth par and accrued interest, or 123 per cent., the advisability of the course which we have adopted cannot be reasonably doubted. Your signature to the enclosed assent, stating color, number and serial letter of each of your bonds is requested before June 10th. Upon receipt by the committee of the assents of a sufficient number of bonds, the holders will be notified of the issue of the certificates to be attached to the lien bonds. We propose to engage as counsel Chas. O'Conor and E. L. Andrews, of New York, and George Hoadly, of Cincinnati, to be assisted by competent counsel at Memphis, Nashville, Knoxville and Louisville.

Committee of Tennessee Bondholders.

EUGENE KELLY,
OF EUGENE KELLY & Co.

JOHN T. TERRY,
OF E. D. MORGAN & Co.

JAS. G. K. DUER,
OF JAMES G. KING'S SONS.

PETER GEDDES,
OF GEDDES & SMITH.

R. S. MORAN,
OF 107 EAST 29TH ST., N. Y.

C. AMORY STEVENS,
Treasurer.

THOMAS G. ROBINSON,
Secretary.

Deposition of R. C. Jackson.

1

THE UNITED STATES OF AMERICA, *Eastern District of Tennessee*, } ss.:

Be it remembered, that, on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, in the city of Knoxville, within said district and the Sixth Circuit, was produced, and personally came, R. C. JACKSON, witness on the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis & Charleston R. R. Company, Complainant, and the Memphis & Charleston R. R. Company and the East Tennessee & Virginia & Ga. R. R. Company, Defendant, to depose and the truth to say in said suit; and, thereupon, the said R. C. JACKSON, being of lawful age and sound mind, being by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

2

3

I am 69 years of age, will be 70 next month, and I live in Knox County, in the suburbs of Knoxville; have been living here between nine and ten years; previous to that time I lived forty-two years in Athens, McMinn Co., Tennessee, and previous to that time in Knox County, Tenn.

4

I am banking at present; have been since 1872—December; have been president, and am now cashier, of the East Tenn. National Bank; I was connected with the East Tenn. & Ga. Railroad from February or March, 1849—first, as secy. and treasurer, then as secy. and treasurer and supt. of transportation, then as general supt.—until Sept. or Oct., 1863. In the summer or fall of 1875, when the road was surrendered to the government, I was made vice-president; some time after, the time I do not exactly remember, I was made general supt. of the E. T. & Ga. and E. T. & Va. Railroad Companies; after the consolidation of these two roads, which happened prior to 1870, I acted as general superintendent until the fall of 1871. As agent of the railroad company I did receive bonds of the State loaned to the E. T. & Georgia R. R. Company, for building the Chattanooga and Cleveland branch.

This occurred in 1858 or 1859. I sold State bonds lent to this company frequently from 1853 to 1859, and probably to 1860. I never sold any under par, and do not recollect of ever selling any at a premium, unless it was upon getting money advanced without interest upon a promise to deliver bonds to the amount of the loans at fixed future date, which I did in one or two instances which I recollect, and probably several. In selling such bonds I represented them as straight Tennessee State bonds, resting on the faith and credit of the State alone for their payment, and I never said or represented that there was any statutory lien on the property of the railroad in favor of the holder or to secure the bonds. No purchaser ever claimed or intimated to me that any other person was liable for the redemption of the bonds but the State. All the bonds I sold I negotiated or sold in person, and not through a broker or banker. Within my knowledge, in

negotiating the bonds, no representations were 9
made by the company or any of their authorized agents to the effect that the bonds were liens upon the road, in favor of the holders of the bonds, and I never heard of such a thing until within the last two or three years.

All the State bonds I received during the years 1858 and 1859, all that I sold as above stated from 1853 to 1859 or 1860 were coupon bonds of the State of Tennessee, payable to blank or bearer. No system of marking or endorsing these bonds was 10
adopted or resorted to by me or the company, as I know of, as a means of identifying these bonds as the bonds loaned by the State to the company. My recollection of our method of keeping the account is that when we disposed of a State of Tennessee bond we credited State bonds and charged cash. I have no recollection of ever seeing any difference in the quotation between Tennessee State bonds previous to the war, and I looked to the quotations when I was selling State bonds (I mean Ten- 11
nessee six per cent. State bonds—the five per cents. were, of course, a little lower) in price. Since the war I have not particularly noticed the price of State bonds, but think probably there is a difference between what are called the old and new series. When I speak of quotation, I mean the New York quotations of market price. My recollection is that the interest account with the State was kept with the general interest account, and showed only the amount of interest due the State 12
semi-annually and its payment. We were required to pay the interest fifteen days before the first of January and the first of July of each year; we uniformly paid it to the Bank of Tennessee as the fiscal agent of the State, and the bank gave us a receipt each time as and for the interest so paid to the

13 State. We usually paid the interest in currency; ssmetimes we paid it in currency and coupons. I mean in any coupons then due or overdue of any six per cent. bonds of the State of Tennessee.

We never were required by the State authorities to limit ourselves to, or pay in coupons of, the identical bonds issued to our company, and never attempted to do so, nor to keep any accounts looking to that purpose. So too as to the sinking fund, we were never required to pay, and never made ex-
14 amination as to whether or not we were paying, in the identical State bonds issued to our company, or any other State bonds. In paying interest and Sinking Fund on endorsed bonds we paid the coupons and the bonds issued by the company and endorsed by the State. I never was present but once when the interest was paid to the bank, and this was in Chattanooga in 1862 or 1863; we were careful to ascertain that the bank's accounts showed the same amount of bonds as our books showed, so as
15 to show the true amount of interest due from our Company to the State; and we paid that amount in money, or in money and coupons as the interest due from the Company to the State on account of the debt due for the bonds loaned the Company by the State. When I said that the State would receive coupons due or past due, I meant to include the coupons which would fall due on the first days of January and July, we paying in December and June previous. In paying the interest we made no at-
16 tempt to designate to the bank that the interest so paid should be applied to the payment of any coupons, or applied in any way. We were directed to make our payment of interest to "The Bank of Tennessee," and when we got our receipt from the bank for the interest paid, we considered we had done everything necessary to be done. Not to

my knowledge, and I think I would have known of it if it were done, did either of the companies with which I was connected appoint anyone in Nashville, New York, Philadelphia or elsewhere to pay the identical coupons attached to the bonds issued to these companies by the State. The East Tennessee and Georgia R. R. Company paid its last interest in July, 1863, or the year before or after, and discontinued payment for several years, and neither during that period or since have I ever heard or known of any holder of the coupons attached to the bonds issued to this company, presenting and demanding payment of said coupons of said company. I am a director and stockholder of the E. T., Va. & Ga. R. R. Company, and in no other way connected with it.

The amount of my stock in the said E. T., Va. & Ga. R. R. Company is $10,000 or $11,000, and I have no other interest in it.

Complainants, by their solicitor, except to the whole of the foregoing deposition upon the ground that the questions and answers are wholly irrelevant to the issues raised by the pleadings, and are incompetent.

R. C. JACKSON.

T. S. WEBB,
Solicitor.

Deposition of J. G. M. Ramsey.

Caption same as in Craig's and Jackson. 1

I was eighty-two years old on the 25th day of March last, and have resided all my life in or near Knoxville, Tenn., except when I have been absent temporarily. I have been a practicing physician during my life; I have been president of several different banks, and among others of "The Tennessee State Bank", at Knoxville. I was appointed by Governor Trousdale, in 1851, the agent of the State of Tennessee, to receive for the East Tennessee and 2
Georgia Railroad Company, three hundred and fifty (350) State of Tennessee coupon bonds, payable to blank or bearer, bearing six per cent interest, evidenced by coupons attached to the bonds, payable semi-annually in the City of New York; each bond was for $1,000, and had forty years to run to maturity. The duties of my agency were to sell the bonds, and apply the proceeds to the ironing and equipping of the road, as required by the Act. I was appointed to and did act as the agent of the 3
State of Tennessee and not of the railroad company. I went in person to Baltimore, Philadelphia, Boston and New York, to sell these bonds,—and sold in the New York market two hundred and forty-seven of them for cash, at rates varying from 103¾ to 104½, that is from 3¼ per cent to 4½ above par. I sold these bonds as straight Tennessee State Bonds, and procured the favorable price which I obtained for them by representing to them and showing from the Comptroller's report, that the indebtedness of the 4
State of Tennessee, amounting to only three mil-

lions of dollars ($3,000,000) one half of which was an interest paying stock ; that is the State's stock in the Bank of Tennessee and the Union Bank, and by representing also the resources of the State, the extent of its territory, the fertility of its soil, and the character of its people, and its climate, its agricultural products, and its mineral resources. I never mentioned or represented that the bonds were secured by any statutory lien on the property of the road in favor of the bondholder, nor did any broker ever ask me any such question or make any such claim. I afterwards sold the balance of 103 bonds at par. These bonds were all sold prior to the year 1852, and during the year 1851. The 103 bonds which were last sold were sold at par or a little above. The Bank of Tennessee, of a branch of which at Knoxville I was President, was the fiscal agent of the State, and belonged wholly to the State, received revenues and made its disbursements in the payment of its judicial and executive officers, and in the payment of its coupons on its bonds. The proceeds of the bonds I personally disbursed. I have no connection with or interest in the railroads of the State of Tennessee, their stocks or their bonds.

And further deponent saith not.

(Signed) J. G. M. RAMSEY.

(Excepted to for irrelevancy.)

Deposition of John J. Craig.

THE UNITED STATES OF AMERICA, } ss:
Eastern District of Tennessee, }

Be it remembered, that on the 30th day of August, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office in the city of Knoxville, within said District, in the Sixth Circuit, was produced and personally came John J. Craig, witness on the part and behalf of the defendants, in a certain suit now depending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens *et al.*, on behalf of the holders of bonds issued to the Memphis and Charleston Railroad Company, are complainants, and the Memphis and Charleston Railroad Company, and the East Tenn., Va. & Ga. Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said John J. Craig, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

I reside at Canton, Miss., and am here temporarily until I can return in safety; I reside about 200 miles from Memphis, Tenn., and about 400 miles from Knoxville, Tenn.

I resided in New York City from 1865 to 1868, and from 1868 to 1877 in Knoxville, Tenn., and from

5 1877 to 1879 in Miss.; I was a banker most of the time when in any business; my house of Craig, Morton & Co., of New York, acted as agents of the Cincinnati, Cumberland Gap & Charleston Railway Company during the years of 1866 and 1867—the time may have embraced from 1865 to the latter part of 1868—and did negotiate the sale of State bonds issued to them by the State. As to the amount of said bonds so sold and negotiated by us, I do not think it was less than one hundred thousand dol-
6 lars nor more than three hundred thousand dollars. The time of selling said bonds was between the years 1865 and the latter part of 1868, as stated above, and the place of sale was Wall street, New York City. I am confident we sold said bonds at not less than 60 cents nor more than 80 cents; they were coupon bonds of the State, payable to bearer; I sold them as straight Tennessee State bonds, and did not represent them as having any lien on any railroad in favor of the bondholders. The question
7 was never mooted as to their being issued to any railroad at all. If it had been believed or represented that there was additional security of any kind it would probably have increased the value of the bonds, but they were sold wholly as State bonds, and their value rested wholly upon the faith of the State in paying them.

I resided in Knoxville about 20 years prior to 1865, and up to that date I was cashier of the Union Bank at Knoxville from the year 1853 to the close
8 of the war. During the time I served as such cashier my opportunities for knowing and learning the value of the bonds were good, as I often had occasion, both in my official and individual capacity, to handle the different series of State bonds, sometimes holding them as collateral for money loaned, and sometimes purchasing them for myself and

friends as investments. During the period I do not 9
recollect of ever having heard of such bonds having any mortgage lien on the railroads in favor of the bondholders. They were sold as straight State bonds. Prior to the war I do not think there was any difference in the market price or value of bonds belonging to the different series of State bonds issued. Since the war there has been a difference in the market price or value of old and new State bonds. By the old bonds I mean or understand those bonds issued previous to the war, and by the 10
new bonds those issued since the war, commencing with Brownlow's administration, but what the difference in price was I do not know; it varied from one to two per cent. The old bonds included the "Hermitage Bonds," "Capital Building Bonds," "Turnpike Stock Bonds," and also the bonds issued to the railroad previous to the war. I have not at this time any connection with or interest in the various railroads of the State, their stocks or securities. 11

The amount of bonds sold by us on account of the Cincinnati, Cumberland Gap and Charleston Railroad Company amounted, as before stated, to not less than one hundred thousand dollars, and may have been as much as five hundred thousand dollars, but it is a matter purely of personal recollection, and therefore not accurate.

Complainants by their solicitor except to the whole of the foregoing deposition, upon the ground 12
that the questions and answers are wholly irrelevant to the issues raised by the pleadings.

T. S. WEBB,
Sol'r, &c.

And further this deponent saith not.

JNO. J. CRAIG.

Deposition of Charles J. McKinney.

THE UNITED STATES OF AMERICA, } 1
Eastern District of Tennessee. } ss.:

Be it remembered that on the 1st day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern district of Tennessee, at my office in the City of Knoxville, within said District, and the Sixth Circuit, was produced and personally came Charles J. McKinney, witness on 2
the part and behalf of the defendants in a certain suit now depending and undetermined in the Circuit Court of the United States for the Eastern District of Tennessee, wherein Calvin Amory Stevens, *et al.*, on behalf of the holders of bonds issued to the East Tennessee & Virginia R. R. Company, are complainants, and East Tennessee, Virginia and Georgia R. R. Co. are defendants, to depose and the truth to say in said suit. 3

And thereupon the said Charles J. McKinney, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

I am 66 years old; my residence is Rogersville, E. Tennessee, where I have lived all my life; I have 4
been a farmer for several years; I was a director of "The Rogersville and Jefferson Railroad Co." for many years before and up to the war, and when the railroad passed into the hands of the State, in the year 186 , I was appointed State Receiver and received from the State, as a loan to this road, under the General Improvement Act of 1852 and several subsequent amendments, thirty thousand dollars in

coupon bonds of the State of Tennessee, which I sent to , brokers and bankers, New York City, to sell for me. I gave them no instructions to represent these bonds as guaranteed or secured to the purchasers by any lien or mortgage on the railroad or its property, but simply instructed them to sell as Tennessee State Bonds. They did sell twenty-five (25) of them, and I appropriated the proceeds to the completion of the road and the injuries produced by the war. The remaining five (5) I returned to the State. While I was a director the Company received in the same way something near two hundred and fifty thousand of the same class of bonds from the State, which were disposed of in the same way, without any representations of any lien in favor of the bondholder. These bonds were all payable to blank or bearer, and were not endorsed by the Company.

We kept no account of the numbers of the bonds, and had no system of marking or endorsing to identify the bonds of the State loaned to us. In paying the semi-annual interest to the State, we paid it either in money or in money and coupons then due, and did not attempt, nor were we required to procure the coupons attached to the bonds loaned to us, with which to make payment of the interest. We just took a receipt for so much interest paid to the State.

After the war the Company was in default for the interest due the State for several years, and that was the reason the State took possession of the road, and neither during the period of such default, nor since, have I ever heard or known of a bondholder presenting to or demanding payment of a coupon from our Company, and I am sure I would have heard of it if such a thing had ever happened.

I am not connected with or interested in any of the railroads of Tennessee, or their stocks, or securities, and further sayeth not.

CHAS. J. McKINNEY.

UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee. }

I, A. R. HUMES, Clerk of the United States Circuit Court for said District, do hereby certify that the foregoing deposition of Charles J. McKinney was taken by and before me, as stated in the caption thereof, on the first day of September, 1879, and was, when taken, reduced to writing by me, in the presence of said witness, and was by said witness subscribed in writing in my presence.

I further certify that the reason for taking the foregoing deposition is, and the fact is that the said witness lives, and at the time of taking said deposition di l live, in Rogersville, Tennessee, the same being at a greater distance than &c., &c., &c., from &c., &c., &c., where the said Circuit Court of the United States for the Eastern District of Tennessee is held, and where the said cause mentioned in the caption is to be tried.

I further certify that I am not of counsel or attorney for either of the parties to the said suit in said deposition and caption named, or interested in the event of said cause, &c., &c., &c.

In testimony whereof I hereunto set my hand and official seal, this first day of September, 1879.

[SEAL.]

A. R. HUMES,
Clerk.

Deposition of Samuel Tate.

1

CALVIN AMORY STEVENS

vs.

THE MEMPHIS AND CHARLESTON RAILROAD COMPANY.

Deposition of Samuel Tate, taken at Knoxville, Tenn., Sept. 25th, 1879: 2

I reside in the City of Little Rock, Arkansas, and am sixty-two years old. I was born in Tennessee, and was a citizen of Tennessee for about sixty years. I have no connection with or interest in the Memphis and Charleston Railroad Company, or any other railroad in the State, nor in their bonds or securities, nor in the State bonds.

I was connected with the Memphis and Charleston Railroad from the year 1852, till the year 1868, 3 the first two and a half years as Secretary and Treaurer, and balance of the time as President; in all something over sixteen years. I was connected with the road from the time of its first active operations, in the collection of its stock and in the commencement of its grading and construction.

I was during the whole of my official connection with the Board almost the exclusive active financial and constructing agent for the Western Division of the road, that being the only portion which lies in 4 Tennessee.

The purpose, as I understood it at the time, of the railroad men of Tennessee, in shaping the

passage of the General Internal Improvement Act of 1851-2 was to get it in the most available shape, to iron and equip their road ; and the State's credit was much better than any outside company's ; even with the State's endorsement they preferred and so shaped the legislation as to get the straight State Bonds issued in order to get more money for it ; besides this they preferred making their liabilities and dealings with the State alone, in paying their interest and sinking funds, having their entire dealings with the State of Tennessee ; and supposed they had accomplished this in the passage of the Act of 1851-2.

Experience had shown that the bonds of companies endorsed by the State never obtained as high a price in the market as straight State Bonds.

The first bonds received by the Memphis and Charleston Railroad, under the Act of 1851-2, were sold as straight Tennessee State Bonds, and brought 108 cents in the market.

A very large proportion of the bonds received by the road under said Act and amendment were received and sold by me as the Financial Agent of the company, and all of them during my connection with the road in full consultation with me.

In the negotiation of these bonds with capitalists in the City of Charleston, New York and elsewhere, I had many consultations and conversations with them in relation to the character of these bonds, in all of which I represented them as straight State Bonds, and that the law made the State alone liable for them to the holder, which position was accepted and acquiesced in by every man whom I ever sold a bond to.

In keeping my accounts with the State of Tennessee in relation to the bonds issued to the Company by the State, I credited the State with the amounts of the bonds without regard to preserving

on the books the numbers of said bonds, as I re- 9
garded our liability as alone to the State for the amounts of the bonds, without regard to any specific bonds. When any amount was paid to the State on interest and sinking fund it was charged to the State as that much money, without regard to its being paid on any particular bond.

I did superintend the payment of the semi-annual interest to the State on the amount of bonds issued to said company. It was directed to be paid or paid so as to be applied to the coupons attached to 10
the identical bonds issued to our company, but it was simply directed to be paid, and was paid, as so much interest, due from our company to the State on the amount of bonds issued to us, believing and construing our obligation under the law to be to the State alone.

All the bonds issued to our company were payable to blank or bearer, and were passed to the purchasers of them without any endorsement or notation upon them to identify them as the bonds is- 11
sued to our company by the State, passing them to the purchaser as I would a bank note, believing that our company had no more liability upon them than it would have upon a bank note passed to such purchaser; the similarity between said bonds and a bank note consists in this, that they were both payable to blank or bearer, passed by delivery and were both numbered.

The system of numbering bonds and bank notes is adopted by the State or institution issuing them 12
for the purpose of identity, and for detecting spurious and over-issues.

The company ceased to pay interest due the State during most of the war, and for more than two years after the close of the war—during which time no coupon was ever presented to or payment demanded from the company by any holder of any

such past due coupon, but payment was demanded by the State of Tennessee for all the past interest due the State.

The Memphis and Charleston Railroad received under the act of 1852, and amendments, $1,100,000, and made an additional indebtedness to the State of about $400,000 for accrued interest during the war.

Under an act of 1875 or '6, an additional loan was made of about $300,000, making a total indebtedness of about $1,800,000.

Every bond received by our company from the State that was negotiated were sold and the proceeds nsed in strict conformity with the law, during my official connection with the road.

As to the act of 10th of March, 1869, I know nothing, but looking as I did, with many other railroad men of Tennessee, to the very large indebtedness of the State, near forty-three millions of dollars, and its depreciated credit, then down to 41 cents, and the large indebtedness of the railroads to the State, and their dilapidated condition after the war, we were anxious to devise some plan to relieve the State and the railroad companies, to prevent the roads going into the hands of political receivers, and being run down and destroyed without benefit either to the companies or the State, under the large sinking fund soon to be collected, with their other pressing liabilities, we devised the plan contained in the law of 20th July, 1870, as the only one to avoid bankruptcy of both railroads and State.

The wisdom of which law was proven by reducing the State's debt over $20,000,000, and to an amount capable of being easily handled.

The demand for State bonds produced by this law was such as to increase their value from 41 to over 65 cents within forty-five days from its passage,

thereby adding over nine millions of dollars to the 17
value of State bonds then out.

As to the amount of capital furnished by the stockholders of this road for its construction and equipment, upon which the State's credit was based, the original stockholders paid in as stock at par about $2,500,000. They sold their own first mortgage bonds on their Alabama & Miss. Division, $1,600,000, at 87c., $1,392,000. They used in its construction and equipment of their net earnings during its construction for construction 18
and equipment purposes about $2,800,000, making a total of $6,692,000, upon which their orginal State loan was about $1,100,000. Loan to fund interest about $400,000. Additional loan after the war about $300,000, making a total Tennessee Loan of about $1,800,000.

After the war the road was found to be one of the worst injured roads in the South, having been at different times lost and won, and in the possession of both armies alternately, and each surrender of it 19
was preceded by its destruction by the retreating army as far as it was possible, and at the close of the war not a permanent bridge or trestle was left on it, and but few buildings, and for 136 miles the ties all burnt or destroyed, and most of the rails burned and twisted around trees and telegraph poles, so as to require almost a new construction and new equipment; for this purpose the company spent over two and a quarter millions of dollars of the stockholders' means and credit, putting the road 20
and its equipment in fine order, and purchaseing of the Government of the United States over $600,000 worth of equipments and material, for which they paid the Government the *cash*.

My impression is that all the bonds issued to our company before the war were sold promptly, for the reason that they brought a good price, but

21 the bonds issued after the war were not sold promptly, but were retained by the company, and used as collaterals for loans, because it was thought that the company could better undertake to pay the interest on money borrowed than to stand the discount on the bonds, which would have been necessary in selling them, and they were so retained by the company as long as I was officially connected with the road, as I recollect.

In regard to any means used to procure legisla-
22 tion in Tennessee for the benefit of the railroads, I can say that I never made an improper proposal to any member of any legislative body whatever, nor do I know any one else doing so.

I know of no holder of any Tennessee State Bond issued under the General Internal Improvement Act of Tennessee, preserving any evidence of the particular road to which such bond was issued; but I do know the fact there was no difference in the price of said bonds in the open market in New
23 York or elsewhere, whether they were issued to solvent or insolvent roads. And further this deponent sayeth not.

SAM TATE.

24

Deposition of Columbus Powell.

CALVIN AMORY STEVENS

vs.

MEMPHIS and CHARLESTON R. R. Co., and others.

1

Taken Sept. 26th. 1879, at Knoxville.

I am about fifty years of age, and reside in Knoxville, Tennessee. I lived in New York City for four years after the war, from 1865 to 1869. While living in New York City I was a member of the firm of C. Powell, Greene & Co., Bankers and Commission Merchants. My firm sold a large number of the bonds of the State of Tennessee 6 per cent. coupon bonds for account of the East Tennessee and Virginia, Rogersville and Jefferson, Knoxville and Kentucky, now Knoxville and Ohio, Knoxville and Charleston and Mississippi Central Railroad Companies; and in addition to said companies, we sold bonds for individuals and bankers; said bonds were mainly sold in the Board of Brokers, through a broker to a member or members of that board; occasional sales were made to individuals privately. The mode of selling bonds through the Board of Brokers in New York, was and is as follows: whenever we had State bonds for sale on behalf of our customers, whether railroads, private individuals or bankers, we gave an order to our broker to sell Tennessee bonds, 6 per cent. coupon bonds payable to bearer; we did not give him any representation

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that the bonds were issued to railroads or for what purpose, nor did we ever give him numbers of the bonds; our broker would offer said bonds when Tennessee bonds was called on the list of stocks and bonds by the President of the Board, and receive such bids from other members of the board as he was willing to accept, reporting the sales to our office when we could deliver according to contract, as follows, if for cash, deliverable on the day of sale, if on time, deliverable on the day fixed in the contract, so that neither the broker who bought nor the person for whom he bought, ever knew any thing in regard to the bonds, except that they were Tennessee six per cent. bonds, did not even know their numbers, or for what purpose they were issued, nor did he even see the bonds until they were delivered in final consummation of the sale. Our broker who sold the bonds did not even know anything about them except that they were Tennessee 6 per cents. And the bonds although numbered as all Tennessee bonds were, had nothing on them to indicate or show for what purpose they were issued, or to what railroad, except that they specified under what act of the Legislature they were issued. I mean in brief, that the bonds were sold as straight Tennessee State bonds, and that there was no representation, claim or suggestion made by the seller or buyer that they carried any lien on the property of the railroad company in favor of the bondholders. Bonds were frequently interchanged and loaned between the railroads, so that I myself did not know to what railroad the bonds were issued which I was selling.

In all my New York experience, and I suppose I was one of the largest sellers of Tennessee bonds for account of railroads and others, I never once heard the question raised that the bondholders could look to, or had any lien upon the railroad property be-

longing to the company to which the bond was 9
issued. Had frequent conversations with holders of old and new bonds, who would consult me about the payment of interest on the bonds by the State, and in all these conversations the point discussed was what the sense of the people of the State of Tennessee as to the payment of the interest on said bonds, and never heard any suggestion or allusion to a claim of a lien on the property of the railroad companies of the State in favor of the bond-holder. 10

I do not think that two millions of dollars is an overestimate, but rather an under estimate, of the amount of Tennessee State bonds we sold while in business in New York City. I mean Tennessee sixes. The bonds were issued to the railroad companies by the State just as they applied for them, taking up the number at the number last issued. There was no mode of classification as to numbers of bonds adopted by the State authorities in issuing them so as to identify and distinguish the bonds 11
issued to railroads, or any particular railroad, from the bonds issued by the State for any other purpose than for the railroads. In other words, there was no set of numbers for each particular railroad, or for all the railroads, but there was one common series of numbers for all purposes; therefore it was impossible for an outsider, seller or broker in New York, to identify any Tennessee State bond coming to him there as a bond issued in favor of any railroad.

There was no difference in the price of Tennessee 12
State bonds, as sold on the same day, either for the East Tenn. and Virginia Railroad, a road of 130 miles in length, solvent, completed, and with full connections, and the "Knoxville and Kentucky Railroad," 40 miles, and incomplete and without connections, "The Rogersville and Jefferson Railroad," 16 miles in length, and incomplete, and the

"Knoxville and Charleston Railroad," 16 miles in length and incomplete, the three latter all being insolvent; nor the Mississippi Central Railroad, complete and with full connections, running 250 miles across the State of Tennessee.

I have no connection with nor interest in any railroad of the State, nor their stocks or securities.

It was a well known fact that these short insolvent railroads received twice as many bonds from the State per mile as the solvent roads, and yet the bonds on the market sold at the same price, as my books will show; and I give the following illustrations of actual sales from my books: we sold through our broker, in the Board of Brokers in New York, on Sept. 20, 1866, $80,000 of Tennessee bonds at 71⅜, 72¾, and 73, and we delivered in consummation of these sales bonds indiscriminately from the following roads, "E. T. & Va.," "Knoxville and Kentucky," and "Rogersville and Jefferson." This is only an illustration of what frequently occurred, and in one instance sold in the same manner $100,000, in which the bonds of the Mississippi Central Railroad were delivered in common with the bonds of the railroads above mentioned and at the same price.

The reason for the name of Old and New Tennessee sixes was on account of the old carrying with them five past due coupons, when the new sixes were placed on the call of the stock board; that custom was continued after the coupons were paid or funded by the State, when the difference in the market value of the old and new was reduced to a merely nominal difference.

All six per cent. State bonds issued prior to 1860, whether to build the Capitol, buy the Hermitage, pay for the State's stock in banks or turnpikes, or to railroads under the Improvement Acts, or for any other purpose, were called old Tennessee sixes,

and without regard to what they were issued for, 17
was a good delivery in the New York market, and
at the same price.

Before the war the bonds issued by the railroad companies of Tennessee, with a first mortgage lien on the property of the roads and endorsed by the State, did not bring as high a price in the market as straight State sixes issued to aid the railroads or other purely State purposes. The reason for this is that the credit of the State was so high as through her fiscal agent, the Bank of Tennessee, 18
she promptly paid her interest every six months in New York City. No doubt or apprehension was either felt or expressed as to her ability and promptness to pay her interest; while in the vicissitudes of railroad projects there was always doubt, and no such confidence did or could exist, and notwithstanding the State endorsement, it was secondary and it was felt that in case of default on part of the railroads, the State would delay until the lien on the railroad property in favor of the bond- 19
holders was enforced and exhausted before she would discharge her secondary liability.

Wm. G. Swan and I, as directors and fiscal agents of the Knoxville and Kentucky Railroad, went to New York in 1860, and sold some $30,000 to $40,000 of the first State bonds issued to that company; we sold them through brokers on the public market as straight Tennessee bonds; no representations were made by us, nor any inquiries or questions raised as to there being any lien on the rail- 20
road in favor of the holders of the bonds sold by us. We never dreamed that such a fact would have enhanced or affected beneficially the market.

And further this deponent sayeth not.

COLUMBUS POWELL.

Deposition of Vernon K. Stevenson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bondsof Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY,

against

MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

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2

52 Broadway, August 12, 1879.

Hearing to take the deposition of VERNON K. STEVENSON, pursuant to notice.

Present—Mr. ANDREWS for Complainant.
Mr. HUMES for Defendant.

It is consented and agreed by both parties that the deposition of the witness, Vernon K. Stevens, shall be taken but once,and is to apply to each of the above-entitled actions, and be considered as testimony in each. 3

It is agreed by counsel that this deposition need be taken but once, and that it may be read as evidence in all the causes in which the Louisville & Nashville Railroad Company, either at Nashville or Memphis, is party. 4

VERNON K. STEVENSON, being first duly cautioned and sworn in each of the above entitled actions, deposes and says:

5 *Direct-examination* by MR. BAXTER, Defendant's Counsel:

Q. What is your name, age, residence and occupation?

A. My name is Vernon K. Stevenson; I was 67 years old the other day; I reside in the city of New York; I am President of the Real Estate Trust Company, and in some respects agent for railroads.

Q. Were you ever connected at any time with
6 any of the railroads of Tennessee; if so, with what railroad, when and in what capacity?

A. I was connected with the railroads of Tennessee. I was first Commissioner for the Nashville and Chattanooga Railroad under the charter. I was then first President of it, and continued so for 20 or 30 years. I was then President of the Winchester and Alabama Road, and so continued until its completion, when I resigned. I was then President of the Nashville and Northwestern Road, and
7 continued so until after the close of the war. I was President of all three at once, I think; that is, the succession, I came into the Presidency of them. I was President of the Nashville and Chattanooga Road from about 1844-5 to 1865, and I was President of the Northwestern Road. I don't recollect exactly the time I became President of the Winchester and Alabama Railroad. It was after the first organization had failed to build the road. It was broken down, and I took it up and finished it
8 in a couple of years, in connection as a branch of the Chattanooga Road, in connection with it and its interests. The Northwestern Road, I think, I took possession about 1858-9 as the President, but I don't recollect accurately the time. It had been under contract and broken down also. I took it up and finished it in connection with the Nashville and Chattanooga Road.

Q. Did you as president or as the officer of any 9
of said railroad companies receive any bonds from the State of Tennessee loaned to said companies by the State under the Internal Improvement Law of that State?

A. Yes, sir, I did.

Q. In the negotiating or disposing of said bonds did you sell them directly to purchasers or were they sold through bankers and brokers generally?

A. Well, I think those on the Winchester and Alabama Railroad were all sold through bankers 10
and brokers, perhaps some of them might have been delivered to parties we purchased iron of and foreign parties. My impression is that they were pretty much all disposed of through bankers or brokers, either by the company directly or through parties that they dealt with.

Q. In negotiating bonds were any representations made by the company or their authorized agents to the effect that the bonds were liens upon the roads in favor of the holders of the bonds? 11

(Objected to as immaterial).

A. Never that I knew of—never in any case. Straight bonds sold for more than the endorsed bonds; that fact had been tested by the sale of bonds with roads that I was connected with. The endorsed bonds by the State for railroads sold for less than straight bonds in all cases, and therefore parties selling bonds and parties buying bonds were each mutually anxious that no idea of 12
lien should be had on either side. There was a difference in price of one to two or three per cent. on all bonds endorsed by the State for the roads in the State and straight bonds issued by the State without any liens upon anything.

Q. Do I understand that bonds of the State of Tennessee which had been issued to pay for the

13 subscription of the State for stock in turnpikes, having no lien upon anything, sold for more than bonds of such railroad companies as the Nashville & Chattanooga Railroad and the East Tennessee & Georgia Railroad endorsed and guaranteed by the State?

A. I do; the difference was one to three per cent. never less than one, that I ever recollect of, and as high sometimes as three per cent. difference.

Q. In selling State bonds loaned to railroads in
14 the New York market, what endorsement or system of marking, if any, was resorted to by which the bonds could be known in the stock market as having been loaned to any particular company?

A. There was no such endorsement that I ever heard of; none on any of the bonds that I had anything to do with.

Q. What was the difference in price, if anything, between the straight bonds loaned to the railroads under the Internal Improvement Act of 1851-2, and
15 straight State bonds that had been issued to build the Capital, buy the Hermitage, and for other purely State purposes?

A. Not one particle; they all sold precisely the same. No question was ever asked until after the war, as to any bond issued by the State being more valuable than another bond issued by the State.

Q. What was the difference in price, if any, between State bonds issued to important and solvent roads and to those that were issued to unimportant
16 and insolvent roads?

A. There was not a particle of difference; and no difference in the price after the roads became insolvent even after the war. Nobody ever asked or cared whether the bonds were issued for the Nashville & Henderson Road or whether issued for the East Tennessee & Virginia or Memphis & Charleston Road, which was then one of the best railroads in the

State; nobody asked any questions and never 17
thought who they were issued to, or how they were issued.

Q. Was there any record or source of reference kept here in New York by which purchasers of Tennessee bonds could ascertain to what particular companies they had been issued?

A. Not that I ever heard of; never heard any questions asked. If you called Tennessee bonds, that's all you said, it's a Tennessee bond. There was no distinction that I ever heard of. 18

Q. When was the first information given to the public by which they were enabled to select out the bonds issued to particular railroads?

A. Well, I don't know of my own knowledge about that, I never heard of it until a few years ago.

Q. What is the difference now on the Stock Board in New York, between the price of Tennessee bonds loaned to railroads and those issued by the State for other purposes? 19

A. None that I know of; I don't know a particle of difference.

Q. What is the difference in price now between bonds of the State loaned to solvent and important roads and those loaned to insolvent and unimportant roads?

A. None at all that I know of; I don't think the question is asked in dealing in them even to-day, at least I have not known of its being asked as to what roads the bonds are issued to. 20

Q. Were the bonds loaned to different railroad companies generally disposed off as soon as issued, were they in some instances held for greater or less periods of time by the companies?

A. Well, all the strong roads held their bonds; they earned them before they got them, and they paid what the State required to be paid before they

21 got them, and disposed of them generally as necessity required future payments to be met, and generally held some all the time. One company I was connected with held its bonds and held over bonds when the road was finished. When I resigned as President I turned over the bonds to the Board that was left over, with the North-Western Railroad Company that I was building, and it ought to have been pretty hard pressed, as we took it broken down, and yet we always had more or less bonds on
22 hand. From the time of receiving until the next time of receiving we almost always had bonds on hand, sometimes a good many.

Q. Between the time that a company would receive bonds from the State and the time that it would negotiate these bonds to outside parties, was the interest paid by the company to the State or not?

A. Yes, always.

Q. What was the price of Tennessee State bonds
23 when the Internal Improvement Act of February, 1852, was passed. Were they at or above or below par, and how much?

A. I don't recollect accurately; my impression, generally, is that the bonds were never below par during the building of the road except, perhaps, in the Panic for a very few weeks. They were always about par, or a little above. Certainly that was so about 1852, and from that to 1854, 1856, and 1858. Perhaps 1857 is the time I said there was a panic,
24 and the bonds might have been for a little while below par, but I don't think they continued so long.

Q. When railroad companies would receive bonds from the State under that law, would they keep any list or memorandum of the numbers of the bonds received by them so as to identify them and keep trace of them?

A. No; not for that purpose, but whenever any 25
were shipped I always had the numbers taken until I knew when they were received so as to identify them in case they were stolen or lost on the way.

Q. I mean by my last question was any such record kept with a view of being able to trace the numbers of the bonds so as to know what bonds to pay off?

A. No, sir; you paid in any that you had; you paid in just as you chose; bonds and coupons were indiscriminately paid in; they would be paid 26
in without regard to whether they belonged to bonds issued to them, or any other bonds, unless it was endorsed bonds. We always paid identical endorsed coupons and we paid identical endorsed bonds in redeeming them, because our immediate liability was on them, but the other bonds we never took any charge of, because we did not consider there was any lien on them; we never undertook to pay the particular bond issued to us, but whenever it came to paying endorsed bonds, they were very 27
careful to take up bonds that were endorsed for them, and so with the coupons, that is they paid the coupons that the State endorsed for them.

Q. When railroad companies of Tennessee would pay the interest, which they had agreed to pay, to whom did they pay it?

A. They paid it to the State.

Q. Through whom?

A, To the Bank of Tennessee. It was a State bank, belonging to the State, and its business was 28
geaerally done through that bank. The Bank of Tennessee was always the fiscal agent of the State of Tennessee.

Q. When a railroad company would pay in a given amount of money to the Bank of Tennessee for interest, would it designate to the bank the particular bonds or coupons upon which that money

29 was to be paid, or did it just pay in so much money on account of interest due from the company to the State?

A. Well, the companies knew always what they had to pay, and sometimes they would go and pay it. Say the company owes this to the State for interest on the bonds issued to it; sometimes they would pay in part to the State and the State would let it run a little, but we would pay it all in from time to time, but it was never paid on any particu-
30 lar bond; it was paid as so much interest due the State.

Q. Who paid out this money and took up the coupons of the State?

A. The Bank of Tennessee. I suppose the money was paid into that bank, who kept the coupons as vouchers to show that they had been paid.

Q. Did any railroad company with which you had any connection, or any other company with whose course of business you were acquainted, have
31 any agent either at Nashville, New York or Philadelphia to pay the interest on straight State Bonds, that had been loaned to them?

A. No, sir, never.

Q. Did any bondholder of Tennessee ever present to any railroad company, so far as you know, any coupons of the State Bonds loaned to such company and ask payment thereof from such company?

A. Never that I heard of.

Q. These coupons which had been paid and taken
32 up by the State; were they kept by the State or returned to the companies?

A. I don't recollect of any being returned to the companies.

Q. Are you acquainted with the circumstances that led to the change in the Internal Improvement system of Tennessee from endorsing bonds of the companies by the State to loaning bonds of the

State to the companies? Please state fully all con- 33
nection you had with the change of the system, if any; and state if you know what were the motives and reasons which induced such change?

A. It was brought about on the part of the railroad companies to have straight bonds because they sold for more, and the State did not care whether they endorsed or issued straight bonds, they expected to be responsible in either case, and, as at that time they did not issue any more than they were well secured in, it made no difference to the members 34
of the Legislature which they voted for.

Q. Where were you living in 1869 and 1870?

A. In New York.

Q, What business were you engaged in then?

A. I think I was in the real estate business—real estate agent here. I went into business here to start my son. He was anxious to go into law or merchandizing and he did not care which. I continued in business with him four or five years, until 1871 or 1872, when I withdrew from his business, 35
and he is carrying it on now.

Q. Was the fact known in New York in 1869 and 1870, that the railroad companies of Tennessee were paying off their debts to the State by issuing company's bonds and using the proceeds to buy up bonds of the State to retire their debts?

A. It was very publicly done. The bonds taken for that purpose bought and talked about all the time, swapping, exchanging, twisting to get the bonds to pay it it was a very notorious matter here, 36
as much so as anything, because there was so much of it; I have no doubt every bondholder was applied to more than once and the explanation made what they wanted with the bonds.

Q. Was the fact known in New York in 1870 and 1871 that the State of Tennessee had filed a bill at Nashville, claiming that the lien belonged to the

37 State, and asking to sell such a delinquent railroad as had been unable to buy up bonds of the State enough to pay off their debts?

A. It was a matter generally understood among bondholders, and it was thought by them that the bonds would be so benefited by taking so much off the market.

Q. What proportion of the entire bonded debt of Tennessee is held in New York, do you suppose?

A. Four-fifths, probably; I should think here
38 and in European agencies, but I don't know accurately.

Q. Did you ever hear any holder of Tennessee bonds complain of the action of the State and of the companies in retiring their debts, or selling out their railroads until the litigation in this case?

A. No, sir; never.

(This entire examination is taken subject to legal objection, and complainant's counsel
39 moves to strike out all the answers based upon hearsay, and not upon personal knowledge, and each and every of them.)

Cross-examination by MR. ANDREWS, complainant's counsel, begun:

1 x Q. Now, Mr. Stevenson, you state that you are an agent for the railroads in this city. Will you please state what railroads you are agent for?

40 A. The Nashville & Chattanooga road and its branches.

2 x Q. Are you a holder of any of the securities of the Nashville & Chattanooga road?

A. I hold some few of the securities, but not many.

3 x Q. Do you own securities on any other Tennessee railroads?

A. No, sir.

4 x Q. Are you a holder of Nashville & Chatta- 41
nooga securities, and to what amount?

A. I hold very little of it.

5 x Q. How much of the stock?

A. Well, I hold quite a large amount of stock of the Nashville & Chattanooga and St. Louis.

6 x Q. That is one of the roads against which bills are pending by Tennessee bondholders for the enforcement of their statutory liens, is it not?

A. Yes, sir.

7 x Q. During the time you were an officer of the 42
Tennessee railroads did you ever have occasion to give a receipt to the State of Tennessee or its officers for bonds of the State received by your companies?

A. I think I have.

8 x Q. Do you know whether or not, as a matter of fact, those receipts given by you did not specify the numbers of the bonds received by your companies?

A. I don't recollect; I think it very likely, but I don't recollect. 43

9 x Q. I understand you that the companies over which you presided I think you were President?

A. Yes, sir.

10 x Q. Did you not keep a record of the numbers and descriptions of the Tennessee bonds received by them?

A. I don't recollect that they did; I may possibly be mistaken in that; their books will show more correctly.

11 x Q. You are not sure they did not keep such 44
a record?

A. No, I am not sure whether they kept a record or not; they kept a record when they shipped the bonds.

12 x Q. I understand that you personally participated in the negotiations by which your Companies disposed of Tennessee bonds to the first

takers. I think that is a correct statement of your testimony?

A. In some cases, not generally.

13 x Q. Now in those cases in which you did personally participate in negotiating, I understand you that it was desired by the purchasers of those bonds that there should be no lien to protect those securities?

A. No, I have not said that at all.

14 x Q. I give your exact words?

A. I stated that it was mutually desirable by the parties, and gave as the reason that the bonds sold for less.

15 x Q. Did you ever receive any indication from any purchaser of Tennessee bonds that he did not wish to have a lien to secure the bond that he was about to purchase?

A. I don't think I ever heard the question to come up in any shape except when the bonds were being gotten up because nobody ever asked for a lien. When bonds were being gotten up the straight bonds issued to the roads would bring more, and as that was a matter which would meet the wishes of the buyer I presume they would have the same feeling as the seller, as they sold for more.

16 x Q. Did the straight bonds issued by the State of Tennessee, prior to the General Internal Improvement law of 11th February, 1852, sell above par or at par. I mean all of them; and was the credit of the State of Tennessee at that time entire unimpeachable and unimpeached?

A. I don't recollect of their ever having sold under par. I don't think they sold for less than par, and if they did it was for a very short time and for a very small amount.

18 x Q. How did the State credit of Tennessee stand then?

A. I don't think any State stood better than Tennessee.

19 x Q. Did the straight bonds of the State of 49
Tennessee, issued prior to the year 1851, and so in the year 1850, and during a part of 1851, until the fall or winter, did they not sell at a better price and command a higher credit than the State bonds issued after the Internal Improvement Law was passed?

A. I think not; if there was any difference it was a very slight difference and was not regarded; it had no effect at all.

20 x Q. Then I understand you that the State 50
bonds issued after the General Internal Improvement Law sold for a better price than those immediately preceding its passage?

A. I don't think it had any effect. The general impression here was that the State was secured and therefore the large volume of bonds issued did not affect its credit.

21 x Q. What is the lowest price you think Tennessee bonds sold at; I refer to the years 1850-'51,

A. I do not recollect the bonds selling below par, 51
but not having very much connection I may be at fault in the matter. After the bonds were issued I had connection and I think I recollect pretty accurately.

22 x Q. Now you were an officer of these railroads, Mr. Stevenson; how many Tennessee bonds could be floated—were floated at par before the passage of the act of February 11th, 1852, during 1850 and 1851, easily and without difficulty?

A. You can tell if the State was giving away 52
bonds there would be many afloat, but if the State were issuing bonds where it was secured, as the early bonds were secured and all well secured, they could be issued without impairing its credit, and it was the knowledge of that fact that prevented the impairing its credit.

23 x Q. Did you know, or ever hear, or ever read,

53 that the act of the Tennessee Legislature passed on the 11th February, 1852, under which I understand that your companies received bonds, contained these words: "That so soon as the bonds of the "State shall have been issued for the first section "of the road as aforesaid, they shall constitute a "lien upon said section so prepared as aforesaid "* * * and the State of Tennessee upon the is-"suance of said bonds, and by virtue of the same "shall be invested with said lien or mortgage
54 "without a deed from the company for the payment "of said company of said bonds with the interest "thereon as the same becomes due."

A. I had a great deal to do with the getting up of that law, and was by when every word was scanned, talked and reckoned about. Mr. Frank Fogg wrote it. He was a brother to my brother-in-law; and I stumped the State to get it passed; we could not get it passed before, and I went to the counties where the opposition was and spoke
55 against the politicians and passed that law.

24 x Q. Did you ever hear of an Act passed at the same session of the legislature, about three weeks and a half before the passage of this general law by which the issue of State bonds to the East Tennessee and Virginia Railroad for building the bridges was authorized?

A. I had very little to do with that; I believe that there was such an act passed for one road.

25 x Q. Do you know what model was taken for
56 drafting this General Improvement Law?

A. We took the the model from the earliest roads in South Carolina in getting up our charter.

26 x Q. Now, as you have read the passage I have just quoted from that law, how could you state in your direct examination that the bonds were never considered, if I am correct in quoting you, liens upon these roads?

A. In drawing up that act it was solely intended 57
to secure the State, and the law was made as distinctive as possible in that direction to secure the State only.

27 x Q. What did they mean, then, that the bonds should constitute liens?

A. Very well; the State issued bonds, and the State was liable for the bonds.

28 x Q. Did the Bank of Tennessee ever lend any of the companies with which you were connected, moneys to pay their interest with on these bonds? 58

A. I don't recollect that they did; they may have done so, but I don't recollect; I was director in the Union Bank from the time it broke down in 1837 until the war; my business was generally done there, and any borrowing was done at the Union Bank; but we did not do much.

29 x Q. Did the State bonds your railroad received contain any reference to any legislation of the State of Tennessee under which they were issued? 59

A. I don't recollect, sir; not accurately to speak of, because it is a matter I had not charged my mind with.

30 x Q. You state that the Tennessee bondholders made no objection to the act of the Legislature of 1869–70; do you not know that a committee of Tennessee bondholders about that time obtained the opinion of the late Chief Justice of the State of New York, and of another eminent lawyer in this city, to the effect that that legislation of Ten- 60
nessee impaired their interests in the liens on the railroads?

A. No, sir. I knew nothing of it at all. A great many bondholders came here, and I was asked to the meetings about that time and afterwards. They were the large bondholders.

31 x Q. Do you not know that that opinion was printed, and publicly and widely circulated?

61 A. No, sir. Never saw it. I don't think I ever heard of it even. It may have been done, but I never heard of it before.

32 x Q. You mention that there was a great deal of buying and changing and operating, or words to that effect, in Tennessee State bonds, or by third parties under these substitution laws. Were you interested in railroads at that time?

A. Yes, sir. I was interested in the Nashville and Chattanooga and St. Louis Railroad. I held
62 stock in it for thirty years.

33 x Q. You are not an officer now?

A. No, sir.

34 x Q. Were you consulted in reference to the purchases of bonds by any of these companies?

A. Yes, sir.

35 x Q. What companies?

A. The Chattanooga road had to purchase bonds to pay for the Northwestern road, and that led me in contact with buyers of other roads in Tennessee.

63 36 x Q. I suppose it was your object, and that of your coadjutor, to purchase Tennessee bonds at as low a price as possible, for the purpose of this substitution?

A. Well, I don't understand exactly your meaning. We gave the market prices and never made an attempt to interfere directly or indirectly. I think our company paid as high an average as 70% on the dollar for bonds they bought for the Northwestern Railroad.

64 37 x Q. Is that positively true of other railroad companies who obtained State bonds at that time?

A. I can speak for none but my own company. We paid the market prices; never, in any case, did we undertake to put bonds down; and the whole history of the Nashville & Chattanooga Road is that of integrity and honesty and principle from the bottom to the top in everything.

Adjourned to August 13th, at 11 A. M.

AUGUST 13th, 11 A. M. 65

Adjourned to August 18th, 1879, 12 M.

AUGUST 18th, 1879, 12 M.

Cross-examination closed.

Re-direct examination by W. Y. C. HUMES, Esq.

The witness deposed as follows:

During the whole time of my connection with the Nashville & Chattanooga Railroad Company, 66
Northwestern Railroad Company and Winchester and Alabama Railroad Company, I was a resident citizen of Tennessee, and gave my entire time to the business of those roads; I did make all important contracts and payments for them and managed their finances—I received, and controlled and disposed of the State bonds issued to said railroads; those bonds were not generally sold by me personally to purchasers, but were forwarded by me to bankers and brokers in New York, for sale. 67

V. K. STEVENSON.

Subscribed and sworn to before me, this 18th day of August, 1879.

WILLIAM H. DELANCEY,
Notary Public.
Westchester County, acting in New York County under and by virtue of 68
chapter 807, of the Laws of 1873, of the State of New York.

Deposition of John S. Claybrooke.

Middle District of Tennessee:

Be it remembered, that on the 23d day of September, 1879, before me, as Examiner appointed by the Circuit Court of the United States for said district, at my office, in the City of Nashville, Tennessee, was produced and came before me John S. Claybrooke, witness on behalf of the defendants, to depose in civil causes depending in the Circuit Court of the United States for the Eastern District of Tennessee, wherein C. A. Stevens is complainant, and the Cincinnati, Cumberland Gap & Charleston R. R. Co., *et al.*, are defendants; same, complainant, and the Knoxville & Kentucky R. R. Co., *et al.*, are defendants; and the same, complainant, and the East Tennessee & Ga. R. R. Co. are defendants (3 cases).

And the said witness, being of lawful age and sound mind, and being by me first duly cautioned and sworn, deposed as follows. Said deposition was taken by consent of counsel for the complainants and the defendants, and in their presence, and by me reduced to writing in their presence, and in the presence of the witness.

Said JOHN S. CLAYBROOKE, being sworn, deposes as follows:

I was president of the Tennessee & Alabama Railroad from 1852 to 1857, and then from 1859 to 1866; during the first period of my presidency, in June or July, 1854, my company received by me from the State of Tennessee 300 bonds of the State, as a loan

5 to the company, under the Act of February 11, 1852, and the amendments thereto, each bond for $1,000, with coupons for the semi-annual interest attached thereto.

These bonds were sold by an agent of the company in New York, under my instructions, and were sold at par, and the proceeds were used in strict accordance with the requirements of the Statute.

I sold some of the bonds issued to my company
6 by the State to Mr. Carter, and also to the Bank of Tennessee, at par. I never instructed or represented to the agent who sold these bonds in New York that there was any lien on the property of the railroad company in favor of the holders of the bonds, but I instructed him to sell them, and the bonds I also sold. I sold them as straight Tennessee bonds. I hereto attach my report of 1855 to the stockholders of my company of the financial operations of 1854 as "Exhibit A" to this, my deposition, and
7 adopt its statements as true.

I am acquainted with the methods of making the semi-annual interest payments on the amount of bonds loaned to us by the State.

We paid in money into the Treasury of the State or the Bank of Tennessee the amount of interest due from us to the State, and we never were required or attempted to adopt any system whereby to secure the applications of these payments to the coupons attached to the bonds loaned to our com-
8 pany.

But whenever we retained bonds issued to us by the State beyond the time when the coupons fell due, we paid this over-due interest by clipping off the coupons and returning them to the State. These were the only instances that we ever attempted to pay the identical coupons of the bonds issued to our company.

I know that we did pay our sinking fund before 9
the war, and we paid it in other bonds than those issued to us, and we never attempted to pay in the identical bonds issued to us by the State; there was no such requirement. We kept a description of the bonds which we paid into the sinking fund, but we did not keep the numbers of the bonds issued to us. We never adopted any system to classify or identify the bonds issued to us by the State for any purpose.

During the time I was president, although we did 10
not pay our interest during the war, no holder of the bonds issued to us ever presented an over-due coupon on any of such bonds to me, or any other agent of the company, and demanded payment of the same.

On *cross-examination*, the witness testified:

That the receipt he gave did contain the numbers of the bonds issued to him, a copy of which is hereto attached and marked as "Exhibit B." 11

I live near Triune, Williamson County. I am not a stockholder in the Decatur Railroad Company. I am not a director of the road, but was a director up to 1870, or until it was leased to the Louisville & Nashville Railroad Co.

I never made any payments of interest on the State bonds myself. They were made by the treasurer, Frank Hardeman. They were paid into the Bank of Tennessee is my recollection. I expect that the treasurer's books are in the hands of Seay. 12

Whenever the treasurer of our company notified me that the interest was about due I raised the money. Sometimes had to borrow it.

Of all the bonds issued by the State to the Tennessee & Alabama Railroad Company, I sold myself the following amounts: I sold about twenty thousand dollars of said bonds to the Bank of Ten-

nessee, at Nashville, and about twenty-five thousand dollars of said bonds to Daniel F. Carter, a citizen and resident of Nashville, Tenn. These are all of the said bonds I sold myself. These were the only sale of said bonds made in Tennessee that I know of. The rest of the bonds were deposited in the Manhattan Bank, in New York. Mr. Morrison, the cashier of the Manhattan Bank, acted as agent of my company in disposing of the bonds deposited in said bank. I do not know that he made any representations concerning the bonds deposited in said bank. One hundred and forty-three of the 300 bonds issued by the State to the Tennessee & Alabama R. R. Co., as stated as above, were reserved by the company to pay a debt due Thompson & Forman for iron rails, manufactured and sold by them to the company. Said firm was doing business in England; and 140 of the 143 bonds were paid to said firm in satisfaction of their debt, at par, some time in 1855. On the bonds so held by the company and not disposed of immediately, the interest was paid by cutting the coupons from each bond fifteen days before said coupons were due. They were cut off by me and handed to our treasurer, who paid them into the Bank of Tennessee.

I was appointed by the Governor as agent for the State in disposing of the bonds issued by the State to the Tennessee & Alabama Railroad Company, but never acted as such agent.

In January, 1855, there was a meeting held in the City of Nashville, of presidents and other officers of the railroad companies in Tennessee, and of companies whose roads lay partly in Tennessee and partly in adjoining States, which were entitled to receive Tennessee State bonds under the Internal Improvement laws of the State.

In this meeting it was determined to appoint three gentlemen, who were to act as agents of the

railroad companies entitled to receive Tennessee 17
State bonds under the Internal Improvement Acts. The gentlemen so designated were myself, Campbell Wallace, then President of the East Tennessee & Georgia Railroad Company, and Sidney Smith, President of the Mobile & Ohio Railroad Company.

These last mentioned gentlemen were also to be appointed and commissioned by the Governor of the State as State agents to dispose of the State bonds under the provisions of the Internal Improvement Acts. I know that the Tennessee & Alabama Rail- 18
road Company ratified the selection of these gentlemen for the above purpose, and gave them a written power of attorney to act as agents for said company, in disposing of said bonds. And I am satisfied that the majority of the railroad companies in the State also ratified said arrangement and appointed said gentlemen as their agents.

The Governor of the State afterwards appointed and commissioned these three gentlemen as State agents, in accordance with arrangement made at 19
Nashville. Mr. Wallace declined to act as agent under either appointment, but Mr. Smith and I did accept the appointments. It was our intention to go to Europe to carry out the objects of our appointment.

Mr. Smith did go to England. I went to New York with the intention of joining him in England, but found it impossible to leave home, and therefore the scheme fell through entirely, and no action 20
was taken in the matter.

Sidney Smith is dead, and Campbell Wallace now lives in Atlanta, Georgia, as I am informed.

Frank Hardeman, the former treasurer of the Tennessee and Alabama Railroad Company is dead.

In the report made by me as president of the Tennessee & Alabama Railroad Company in 1856

21 to the stockholders, the following language was used by me:

"In addition to the reasons above suggested in de-
"laying and not pushing forward the enterprise as
"rapidly as we would desire, we might mention
"the great stringency which has prevailed for sev-
"eral years in the monetary affairs of the country,
"which has been especially so in regard to foreign
"capital, upon which we are more or less depend-
22 "ent in finding sale for State bonds and other rail-
"road securities."

Also, on page 10 of the same report, the following language is used:

"The war between Prussia and Allied Powers of
"England and France having ceased, and peace be-
"ing restored, we may look forward as a conse-
"quence to a healthier condition of monetary af-
"fairs, and a larger amount of foreign capital seek-
23 "ing investment in American securities, and there-
"by we will meet with a more ready sale for State
"bonds, and other railroad securities."

In the report of Frank Hardeman, treasurer of the Tennessee and Alabama Railroad Company, to the stockholders, dated August 6th, 1855, under the head of disbursements is the following item:

"State Coupons ..... $4,770 00"

24 In the treasurer's report dated July 26th, 1856, under the head of "Disbursements" is the following item:

"State Bond Interest..... ..... $22,972 50"
"Davidson Bonds..... ..... 549 48"

The county of Davidson took stock in the Tennessee and Alabama Railroad Company to the

amount of $200,000.00, for which the county issued its bonds, payable to and endorsed by the railroad company, upon which bonds the railroad company was liable for the payment of the principal and interest, on failure of Davidson County to pay at maturity, and upon notice to the company. 25

We never received any such notice.

In the report of said treasurer of the company to the stockholders dated July 31st, 1857, under the head of

"TREASURER. 26

" Dr.	Cr.
	" By Cash, Davidson Bonds, $ 918 50
	" " State Bonds.... 18,180 00

During the year 1856, the Tennessee and Alabama Railroad Company issued about $200,000 of its own bonds, with coupons attached for interest, to secure which the income of the road was pledged, after paying all expenses and prior incumbrances."

In the treasurer's report to the stockholders dated June 30th, 1858, under the head of "Disbursements" are the following items: 27

" Cash paid State Coupons.....	$20,758 50
" Company "	1,645 41

Below this table are the following items:

" Bonded Debt—State Bonds.....	$771,000 00
" Company "	46,000 00

When the 43 State bonds now due to the company, but not issued, are received, the bonded debt will be as follows: 28

State Bonds received.....	$771,000 00
" " not "	43,000 00
Company Bonds....	46,000 00
	$860,000 00

29 In the President's report to the stockholders in 1859 is the following:

"BONDED DEBT.

"Tennessee 6 per cent. Coupon Bonds,	$846,000.00
"Tennessee and Alabama Railroad "Bonds endorsed by the State.	14,000.00
Total	$860,000.00

30 In the Treasurer's report of 1860 is the following:

" *Dr.*	TREASURER.	*Cr.*
"	State Coupons	$51,300.12
"	Coupon Co. Bonds	424.29."

The Tennessee and Alabama Railroad was finished during the year 1860.

The first payment made by the Tennessee and Alabama Railroad Company on its Sinking Fund
31 account was in 1859, at which time it paid $6,000 to the Sinking Fund Commissioners. The reports of the treasurer of the company show that no payment by said company on the Sinking Fund account due on the 1st of January, 1860.

The treasurer's report of the Tennessee and Alabama Railroad Company, made in June, 1861, for the twelve months previous contains the following:

" STATEMENT.

32 "Of the Treasury of the East Tennessee and Ala-
"bama Railroad Company for the year ending June
"30th, 1861.

" *Dr.*	TREASURER.	*Cr.*
By cash Sinking Fund		$3,600.00

There were no reports made by the President or

other officers of the company after 1861, until after 33
the war. The above amounts of $6,000 and $3,600 are the only payments shown by the reports of the treasurer of the company to have been made by said company on the Sinking Fund account.

I make this last statement from an examination of the reports of treasurer from the year 1853 up to and including the report for the year ending June 30th, 1861, with the exception of the report of 1854, which I have not examined, but the report of 1862, which is not before me, may include all the Sinking 34
Fund due the State anterior to that period.

In the treasurer's report, dated August 6th, 1866, here exhibited to me is the following:

"In March, 1863, the safes of the company were broken open and some of the books and papers mutilated and destroyed; the loss to the company by the books and papers and notes will be inconsiderable, as they can be restored by diligence and labor in time for the purpose of the 35
company; a small amount of money and two (2) bonds, one State and one Davidson County bond, and some loose coupons were also taken from the safes. The numbers were also lost so, that there are no chances to recover these." The numbers were lost with the bonds and coupons themselves.

I don't suppose that he kept any account of the numbers; I certainly never instructed him to do so. R. H. Bradley, Secretary of the Tennessee & Alabama Railroad Company for some years before the 36
war, is now living at Franklin, Tennessee.

Re-examination:

The bonds that were loaned to my company by the State were payable to bearer, and were not marked or endorsed in my name nor in the name of my company so as to indicate that they had been

37 loaned to the company, but they were issued and passed to us as bank notes are. Many of the bonds issued to us we did not sell immediately, but retained them longer than the period of the falling due of the first coupons.

The witness being asked the following question: "Whether the language quoted in your answer to "cross examination from your report of 1856, and "which language is as follows; 'State bonds "'and other railroad securities.' Now, did you
38 "mean by this expression to designate or charac- "terize State bonds as railroad securities?"

(Complainant by counsel excepts to the foregoing question, because it seeks to elicit from the witness an answer which will attempt to construe the language used. This is a matter for the Court and not the witness.
S. Watson, sol'r for compl't.)

The witness answers as follows: I meant to des-
39 ignate the State bonds as entirely distinct and different from the railroad securities, by which latter term I meant to include the company bonds and Davidson County bonds that were a subscription to the road.

I am neither a stockholder nor director in the Tennessee and Alabama Railroad Company, but I am an original stockholder and holder of 10 shares in the Nashville & Chattanooga Railroad Company. I understand the 10 shares have been multiplied.

40 The items quoted in the cross-examination from the Trustees' report of 1865, under the head of "Disbursements," as follows:

State coupons ..... $4,770.00.

I do not know what it means, unless that it designates the amount of the interest paid to the State. I know that we never did pay the coupons attached

to the identical bonds issued to us, except in the in- 41
stances I have already mentioned, where we held the bonds past the time or to the time when a coupon fell due; then we clipped them off and paid them to the Bank of Tennessee on account of our interest. I know that I did not, and none of the company's officers ever did by my instructions, attempt to hunt up and pay the coupons attached to the identical bonds issued to our company in the hands of others. The two following items quoted in the cross-examination from the Treasurer's report 42
of 1856 and 1857, viz.:

DISBURSEMENTS.

Paid to Davidson Bonds.....	$549.48
By cash.....	918.50

These two items cannot designate payments by our company on Davidson County bonds as debtors, for we never did pay any Davidson County Bond in the place of that county. These two items must 43
mean some disbursements or expense on account of these bonds or some other purpose that I don't know.

The two items in the reports of the Treasurer for 1856–57, headed "Disbursement," viz.:

Paid to State bond interest..	$22,972.00
By cash State bonds.....	18,180.00

are intended to designate the interest paid in 1856- 44
1857 to the Bank of Tennessee as the agent of the State.

I mean by saying it was the agent of the State, that it was the agent of the State to receive the interest on the State bonds due from the company to the State, and as the agent of the State it paid her coupons both here and in New York whenever they fell due.

45 *Re-cross examination:*

When the company held bank notes it was not necessary to use any exertion to dispose of them, because they passed from hand to hand as money.

The resemblance between a bank-note and a Tennessee State bond is that both were payable bearer, and pass by delivery without endorsement and are both numbered.

It was no part of my duty as President of the Company to receive or pay out the funds of the company
46 unless specially instructed by the Board of Directors. In making the explanations I have made in the re-examinations in regard to the items in the Treasurer's report, I do not speak from my own personal knowledge of the transactions, but have given my opinion based upon my knowledge of the general conduct of the affairs of the company and its course of business.

(Complainant excepts to all that part of
47 this deposition which gives the witness' opinion in regard to the items in the Treasurer's reports, because it is not the best evidence, and the attempted explanations are based not on personal knowledge, but on inferences drawn by the witness from other facts.

S. WATSON,
Solicitor for Compl'ts.)

The income bonds of the Tennessee & Alabama
48 Railroad Company mentioned in the cross-examination, were sold generally by the Treasurer to the citizens of Williamson and adjoining counties. The county bonds issued to the company for stock were principally sold at home; only a few were sold abroad.

Re-examination:

When in my explanations on the re-examination

in chief I state that I know that my company did not 49
pay any Davidson county bonds as debtor in lieu of the county, the fact is stated on my personal knowledge and not as an opinion.

Again, when I state in the re-examination in chief as to the items "State bond interest $22,972.00, By cash State bonds $18,180.00," I state that these items represent interest paid to the State on the amount of bonds lent to us by the State, and do not represent interest paid to the holders of coupons attached to the bonds issued to us, for I can state 50
emphatically that though I presided over the meetings of the board of directors for some ten or twelve years, I never heard it even suggested that it was our duty to pay on the identical bonds issued to our company.

Counsel for the complainants desires the following questions to be asked the witness:

Q. Did you pay the item mentioned in the Treasurer's report of 1855 under the head, "State cou- 51
pons, $4,470.00," or did you pay the amount in the item of "State Bonds interest, $22,972.50?" If so, to whom were the payments made?

A. I did not do it in person. The payments were made to the Bank of Tennessee.

Q. Did you see the payments made?

A. I do not remember to have seen it paid, though I was sometimes with the Treasurer when the payments were made.

3 Q. When you state in the re-examination that 52
these payments were made to the State; do you not mean that they were made to the Bank of Tennessee?

A. I mean that they were made to the Bank of Tennessee as the agent of the State.

And further this deponent saith not.

JOHN S. CLAYBROOKE.

53 After the attorney for the plaintiff had left my office, the said J. S. Claybrooke made the following statement, viz.: "Our company was authorized by act of the Legislature to receive endorsement and guarantee of the State on our own bonds, but the company had it changed so as to make the aid of the State to the company straight Tennessee bonds, and this was done for the reason that the straight Tennessee bonds commanded a better price in the market than bonds of the company endorsed and
54 guaranteed by the State." Which said statement by agreement of counsel for parties plaintiff and defendants may be added to and made a part of this deposition above deposed to.

Attest:

Middle District of Tennessee:

I hereby certify that the foregoing deposition was taken by me and reduced to writing in the presence
55 of the witness and subscribed by him; that I am not of counsel nor attorney for any of the parties to the suits in which said deposition was taken, and that the fee for taking said deposition, amounting to $4.40, has been paid to me by W. Y. C. Humes, attorney for defendants.

Given under my hand at Nashville, in said district, this 23d day of September, 1879.

56

LEWIS T. BAXTER,
Examiner, as aforesaid.

Middle District of Tennessee, ss.:

I, LEWIS T. BAXTER, Clerk of the Circuit Court for the District aforesaid, do certify that the foregoing is a full, true, and perfect copy of a deposi-

tion taken by me as Examiner at Nashville, Tennessee, on the 23d day of September, 1879. 57

Given under my hand and seal of office in Nashville, this 25th day of September, 1879.

[SEAL.]

LEWIS T. BAXTER,
Clerk.

P. 116. BOND BOOK. A.

"Exhibit B." 58

TENNESSEE AND ALABAMA RAILROAD COMPANY.

$200,000.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred coupon bonds of said State for one thousand dollars each, drawing six per cent. interest, numbered from No. 916 to 1,115 inclusive, dated the 1st day of January, 1854, and falling due on the 1st day of January, 1892, being a part of the first issue, being 300 bonds to 59 said Company under the general Internal Improvement Act passed on the 11th of February, 1852, and the Act amendatory thereof passed, on the 8th February, 1854, the first coupons on said bond falling due on the 1st January, 1855.

Nashville, July 4, 1854.

JOHN S. CLAYBROOKE,
Agent of said T. & A. R. R. Co.
60

I, C. N. GIBBS, Secretary of State of Tennessee, do hereby certify that the foregoing is a copy of a receipt given by John S. Claybrooke, Agent of said T. & A. R. R. Co., for bonds of the State of Tennessee issued to said Company, numbered from 916 to 1,115 inclusive, the original of which is now of record in my office.

61 In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed [SEAL.] the great seal of the State of Tennessee, at the department in the City of Nashville, this 18th day of July, A. D. 1879.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
62 *Davidson County.* }

I, JOHN C. FERRIS, sole presiding Judge of the County Court of said County, do hereby certify that Charles N. Gibbs, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such, and that said attestation is in due form of law and by the proper officer.

63 Given under my hand at office, this 18th day July, 1879.

JOHN C. FERRIS,
County Judge.

STATE OF TENNESSEE, }
Davidson County, }

I, J. R. MCCANN, Clerk of the County Court of said County, do hereby certify that John C. Ferris, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing
64 the same, sole presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and seal of said Court at office, this 18th day of July, 1879.

[SEAL.] J. R. MCCANN.

EXHIBIT TO DEPOSITION OF JOHN S. 65
CLAYBROOKE.

UNITED STATES OF AMERICA,
STATE OF TENNESSEE.

At a meeting of the Board of the Directors of the Railroad Company, held at the office of the Company in on day of 1855, the following preamble and resolutions were adopted, viz.: 66

Whereas, The General Assembly of the State of Tennessee, by act passed the 11th day of February, 1852, entitled, "An Act to establish a system of Internal Improvements in this State," and by an amendatory Act, passed the 8th day of February, 1854, authorized the Governor of said State to issue bonds to various railroad companies, after they had organized and complied with certain conditions specified in said Act and amendments, the proceeds of said bonds being intended for the purchase of 67 iron rails and equipments. And

Whereas, It is very desirable that a permanent value shall be maintained for these securities, and to effect this object a plan has been suggested of having union and concert of action between the organized companies included in said Acts, to whom bonds have been or may be issued, by placing all of said bonds, as received, in one and the same channel of negotiation, to consist of two or more 68 Houses, of first character for financial power and influence, thereby, not only depreciation below their par value, but enabling the negotiating bankers and iron manufacturers to carry their market value permanently above par, and thus secure to this Company a greater amount of revenue from said bonds, and said bankers and iron manufactur-

69 ers more fully in making advances of money, rails and equipments, upon the most reasonable terms, from time to time, in anticipation of higher rates for said bonds; and whilst the several companies may be preparing successive sections of their roads for the rails, and otherwise complying in good faith with the conditions of the above-mentioned Acts. Therefore, for the consummation of said plan, and to secure to this Company the benefits to result therefrom

70 *Be it Resolved*, By the Board of Directors of the Railroad Company (one of the roads specified in said Internal Improvement Acts), that John S. Claybrooke, President of the Tennessee & Alabama Railroad Company, Sidney Smith, President of the Mobile & Ohio Railroad Company, and Campbell Wallace, President of the East Tennessee & Georgia Railroad Company, are hereby constituted and appointed the lawful attorneys of this company (either two of
71 their number acting and concurring), with full power and authority to enter into such agreements and covenants with bankers or iron manufacturers, as may be necessary to effect the objects set forth in the foregoing preamble and these resolutions, resolution, and for that purpose to go to New York, England, or elsewhere, as the joint agents of this company, and other railroad companies of the State of Tennessee, that act with this company in the
72 premises.

Be it further resolved, That the earliest practicable arrangement of this matter by the said attorneys is desired by this company, to whom said attorneys will make a report of their doings, accompanied by copies of all agreements entered into by them on the subject of their agency.

Be it further resolved, That on receipt of said report and agreements, all bonds of the State of Ten-

nessee then held, or that may hereafter be received 73
by their company from the State, shall be placed in the one channel of negotiation, as may be agreed for and as prescribed by said attorneys.

And be it further resolved, That when the joint channel of negotiation shall have been fully organized and established by agreements and covenants, as herein contemplated, the joint agency hereby created therefor shall cease and determine; and this company shall thereafter conduct its business in said channel, in accordance with such agreements 74
and covenants, by its own officers, independently of all other companies.

In witness whereof, the President and Secretary of this Company have hereunto set their names and attached the Company's seal, this day of 1855.

President. 75

Secretary.

REMARKS.

Length of the within-named road in Tennessee, miles.

Terminations at

And connecting the railroad with the railroad.

Estimated time for drawing bonds for 1st section of 30 miles 185 76

Estimated time for drawing bonds for 2d section of 30 miles 185

Estimated time for drawing bonds for 3d section of 30 miles 185

Estimated time for drawing bonds for last section of 30 miles 185

77 Total amount already drawn, $ { Total amount to be drawn for road and bridges, } $

STATE OF TENNESSEE, *County.* } ss.:

Personally appeared before me, Judge of the Circuit Court of County the within named President, and Secretary of the railroad company, with whom I am personally ac-
78 quainted, who acknowledged that they signed, sealed and delivered the foregoing power of attorney, as they were legally and officially authorized to do, on the day and year therein mentioned.

Given under my hand and seal, this day of in the year eighteen hundred and fifty-five.

Circuit Judge of *County.*

79

80

5 CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of holders of bonds issued to the EAST TENN. & VIRGINIA RAILROAD COMPANY,

vs.

THE EAST TENN., VIRGINIA & GEORGIA RAILROAD COMPANY *et al.*

No. 663.
In Equity.

CIRCUIT COURT OF THE UNITED STATES,

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of holders of bonds issued to the CINCINNATI, CUMBERLAND GAP AND CHARLESTON R. R. Co.,

vs.

THE CINCINNATI, CUMBERLAND GAP & CHARLESTON R. R'D CO. *et al.*

No. 664.
In Equity.

CIRCUIT COURT OF THE UNITED STATES, 9

EASTERN DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of the holders of bonds issued to the KNOXVILLE & KENTUCKY RAILROAD COMPANY,

vs.

THE KNOXVILLE & KENTUCKY RAILROAD COMPANY.

No. 665.

10

CIRCUIT COURT OF U. S.,

MIDDLE DISTRICT OF TENNESSEE.

CALVIN A. STEVENS, on behalf of bonds issued to the NASHVILLE & CHATTANOOGA R. R'D COMPANY,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, *et al.*

In Equity.

11

CALVIN A. STEVENS, on behalf of holders of bonds issued to the NASHVILLE & NORTHWESTERN R. R. Co.,

vs.

THE NASHVILLE, CHATTANOOGA AND ST. LOUIS RAILWAY *et al.*

In Equity.

12

13

CALVIN A. STEVENS, on behalf of holders of bonds issued to McMINNVILLE & MANCHESTER R. R'D CO.,

vs.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY *et al.*

} In Equity.

14

CALVIN A. STEVENS, on behalf of holders of Bonds issued to the WINCHESTER AND ALABAMA RAILROAD COMPANY,

vs.

THE NASHVILLLE, CHATTANOOGA
15 AND ST. LOUIS RAILWAY *et al.*

} In Equity.

The deposition of MAJOR CAMPBELL WALLACE, President of the Merchants' Bank of Atlanta, taken on behalf of the defendants, at the Merchants' Bank in Atlanta, I. C. D. Woodson, a notary public, for the County of Fulton, State of Georgia, and in the presence of W. Y. C. Humes, solicitor of the defendant, on the 2d day of October, 1879.

16 The said witness CAMPBELL WALLACE, being first duly sworn, deposes and says: My name is Campbell Wallace; my age is seventy-three years; I am a resident citizen of the State of Georgia, and have been for fourteen years last past. I am now and have been for more than six years the President of the Merchants' Bank of Atlanta, actively employed in the duties of that office. I have no connection

official or other, with any of the railroad companies 17
of Tennessee, nor am I at all interested in any of their stock or securities, bonds or assets, nor any bonds issued by any of them or by the State of Tennessee for any purpose, except ten shares of stock of the Knoxville and Ohio Railroad Company. Nor am I interested in any, the smallest degree, in the issue of any of these suits. I was a citizen and resident of East Tennessee all my life until my removal to Georgia in 1865. I was a director in the East Tennessee and Georgia Railroad 18
Company prior to and up to 1853, when I was elected its President, and from 1853 to July, 1865, gave my time and attention almost entirely to the duties of that office, and the interest of that road. I was its chief executive officer, and financial agent. Under my direction and immediate control all its fiscal operations, transactions and contracts were made, consummated, and performed, from 1853 to 1865. I personally know that the State of Tennessee did lend its endorsement and guarantee on and 19
to the bonds of several railroad companies, including bonds of the Nashville and Chattanooga Railroad Company, of the East Tennessee and Virginia Railroad Company and of the East Tennessee and Georgia Railroad. And these company bonds were secured by first liens and mortgages on the railroad companies issuing them in addition to the endorsement and guarantee of the State. However, the 150 bonds of the Nashville and Chattanooga Railroad Company, issued by that company with 20
the endorsement and guarantee of the State to aid in the construction of the Chattanooga Branch of the East Tennessee and Georgia Railroad Company were secured by a first mortgage on the said Chattanooga Branch These bonds of various companies, though secured by the endorsement and guarantee of the State, as well as by first liens and mortgages

21 on the property of the roads issuing them, did not sell for as high prices as straight Tennessee State bonds bearing the same rate of interest and for whatever purpose issued, whether for railroads or purely State purposes.

Before I was elected President, the East Tennessee and Georgia Railroad Company had received from the State of Tennessee State bonds payable to bearer, with coupons attached, payable semi-annually, to the amount of $350,000 as a loan. After I
22 became its President, and up to July, 1861, the East Tennessee and Georgia Railroad Company received in addition to the above, as a State loan bonds to the amount of $812,000, of the same character and description as the above under the general Internal Improvement Act of February 11th, 1852, Ch. 151, and the Acts amendatory thereof; so that our whole debt to the State for six per cent. State bonds lent to us amounted on the 30th of June, 1860 to, and appears in the report of that date as
23 follows:

State loan, . . . $1,162,000

The account as to Company bonds of the East Tennessee and Georgia Railroad Co., endorsed by the State is set down:

Endorsed bonds, . . . $150,000

In our entire dealings with the State bonds issued to our road, we regarded and treated them as the obligations of the State of Tennessee alone, and we treated, construed, and regarded our obligation
24 (arising from the loan of said State bonds to us by the State), as a debt due from the railroad company to the State alone for the amount of the bonds so lent to the company, at their nominal or face value, and they were the equivalent of money for State of Tennessee six per cent. bonds were then worth and selling at par, as the State had never defaulted in the payment of the interest on her bonds at matur-

ity. The $812,000 of State six per cent. coupon 25
bonds payable to bearer issued to said Company during my Presidency were disposed of under my direction by the Treasurer, R. C. Jackson, and by me. They were sold as required by the law, and their proceeds applied strictly in accordance with its provisions. I sold them principally in Tennessee. I never thought of, nor represented, nor directed any one to represent to any buyer that the payment of the bonds to the holder was secured by any obligation of the company or by any lien on the 26
property of the company in favor of the bondholders; I did not think so myself, and never heard it suggested or claimed by any one during the period we were receiving and selling them, nor did I ever hear of such a claim by any one until within the last two years. When we received the several instalments of these State bonds from the State as loans, no State officer then or at any other time instructed, directed or requested us to adopt any system or mode of identification, marking, 27
or noting the particular bonds issued to us, nor even to preserve the numbers, and we did not ourselves adopt any such system or mode, but we simply credited to "State loan" the amount issued at the time, and on sale of them charged to cash. In paying our semi-annual interest to the State on the amount of her loan to us we did not attempt to have the payments so made applied to the particular coupons attached to the bonds issued to us; nor did we attempt to hunt up said coupons to 28
pay them ourselves; nor did we ever entertain the idea that any holder of State bonds was a creditor of the company. On the 15th of December, and on the 15th of June of each year, we paid the semi-annual installment of interest due to the State from our company on the amount of bonds previously loaned to our company by the State. We paid this

29 interest to the Bank of Tennessee, as the general fiscal agent of the State, and we paid it indiscriminately in money, or any six per cent. coupons from any State bonds, whether issued to railroads or for any purely State purpose. Having paid our interest to the State, and received the receipt for it from the bank, we felt no further concern whether the State paid her coupons when they matured fifteen days afterwards on the bonds issued to us or not; and we never sought or attempted to get the cou-
30 pons attached to the bonds issued to our company, nor could we have identified them. But as to the bonds of our company endorsed by the State we did seek and did pay the coupons on them as our own liability; they amounted to $150,000.00 as at first issued, and were issued under a special act for the benefit of our branch road from Cleveland to Chattanooga. In keeping the account and paying the interest due from our company for the amount of bonds lent by the State to our company, we re-
31 garded and treated it as interest due to the State from our company on the amount of loan, and not as interest due from the company to the holders of the bonds issued to our company.

If I had regarded or thought our company was liable to the holders of the coupons and bonds of the State lent to us, we would certainly, for our own protection, have pursued the same course as to them, both in regard to the interest coupons and the bonds, that we did pursue in regard to our
32 bonds endorsed by the State.

As to these latter bonds, we carefully and regularly, every six months, paid the interest coupons attached to them as our primary obligations; and we saw to it that the State authorities, the Sinking Fund Commissioners, applied each annual payment to the extinguishment of our own bonds endorsed by the State. We bought any six per cent. cou-

pons of State bonds which were offered to us, and 33
took them sometimes to accommodate our friends
giving them the money for them ; and coupons so
bought, and taken, we used to pay our interest to
the State, no matter from what State bonds they
were taken, so they were from Tennessee six per
cent. bonds, and so we satisfied the State authorities
that we got them before or on the 15th day
of December or 15th day of June, the dates of our
payments. We paid our interest promptly and
regularly to the State every six months before the 34
war, and up to January 1st, 1863 ; but we after-
wards fell behind in paying our interest to the State
as follows, as I reported to the stockholders :

"The interest on State loan was paid up to 1st
of January, 1863, and the balance of $155,550.00
was not paid to the State, when it fell due in 1863,
1864, and to 1st of July, 1865.

Although the State defaulted in the payment
of all her interest coupons on all her bonds during
the war, and although this unpaid interest of our 35
company to the State, $155,550.00, remained unpaid
for several years, yet no holders of the coupons, or
of any interest coupon attached to the bonds
issued to our said company ever presented such
coupons or coupon to our company for payment, or
ever demanded or claimed payment of such coupons
or coupon from our company within my knowledge
or information. In making the successive annual
payments to the State of the sums produced by set-
ting apart the percentum on the amount of bonds 36
issued to our company, as required by the 7th sec-
tion of the Act of February 11th, 1852, ch. 151, and
also under the amendments thereto, we construed
and treated them, and had them receipted for by
the State officials as credits on our company's debt
to the State for the State loan, and as payments in
absolute discharge of that much of that indebted-

ness. The mode of the first act was to raise the sinking fund by preserving the State bonds after they had been assigned to the Governor and paid into the Treasury of the State by the company, and reinvesting the interest accruing on them in other State bonds in order to accumulate before the State bonds fell due a fund for the State sufficient to enable her to pay her bonds. This clause of the first act contemplated that, although these annual installments were absolute payments by the company on their debt to the State, and receipted for as such when made, yet the company should continue to pay to the State the interest on the amount of bonds originally loaned to it, and these annual payments, though absolute when made, were to be credited as of the date when they and their accumulations should equal the debt due from the company to the State for the amount of State bonds lent to the company.

Seeing the management of this scheme, I detected that it was liable to confusion in the keeping of the accounts at Nashville of the payments of bonds and reinvestment of interests on bonds paid in by so many companies—some twenty to twenty-five; and more especially as these matters were managed by political appointees, changed every two years with the Governor's election, and not by business men selected and retained for their financial skill. By this confusion we were in peril of losing some of our credits for bonds paid in and thus have to pay again the credit so lost. For these reasons I, as President of the East Tennessee & Georgia Railroad Company, solicited and induced the Legislature, having John Marshall, as President of the Tennessee & Alabama Railroad Company, to help me, to increase the annual payments required to sums adequate to liquidate the debts of the several companies to the State, before the State bonds should fall due, without the

compeer mode above set forth, of keeping the 41
bonds, setting aside the accruing interest, reinvesting it, and thus accumulating the fund for the State.

The Legislature did increase the annual payments of percentage to 2½ per centum on the amount of bonds loaned to the respective companies, and did require the bonds in which these annual bonds were to be made to be cancelled when paid in, instead of being kept, and did allow the payments to be credited as of the dates they were actually made 42
instead of as of the date the accumulated fund should equal the Company's debt for the amount of State bonds loaned to it. The Legislature very willingly and readily adopted this measure because it increased the amount of State bonds annually to be paid by all the railroad companies to the State, and would thus accomplish the purpose of the original act of retiring by or before the maturity of the bonds as many of them as the State had issued to railroad companies. 43

The officers of some of the railroad companies were opposed to this increase of annual payments; but I, as President of the East Tennessee & Georgia Railroad Company, not only solicited and favored its adoption, but after its adoption I increased our payments beyond the requirements of the law. As evidence of this, I here, as part of my deposition, quote the following brief and truthful report on this subject made by me to the stockholders on the 3d of September, 1862, viz: 44

"The Internal Improvement law requires 2½ per cent. to be paid annually on your funded debt, which is ample to liquidate your entire indebtedness to the State before it matures.

In consequence of the distracted condition of the country. the Legislature suspended the payment of this sinking fund, but we have thought it prudent

45 and to your interest to continue to pay not only the 2½ per cent., but as much more as possible, and your company are now some three years in advance of any legitimate call that can be made for payment of sinking fund. Your funded debt at present stands as follows:

Original State loans		$1,162,000
Paid and cancelled		125,000
		$1,037,000

46

Bonds endorsed by State	$150,000	
Paid and cancelled	35,000	
	$115,000	
Mortgage bonds		$ 800,000
Paid and cancelled		154,000
		$ 646,000
Total		$1,798,000."

47

The $800,000.00 of mortgage bonds were bonds of the company, with which the State had nothing to do.

I herewith file as exhibits to my deposition, copies of the receipts of the State officers for the $125,000.00 paid to the State in its six per cent bonds on the State loan to our company.

It will be observed that the $14,000.00 and $2,000.00 were paid in prior to 1860, and these re-
48 ceipts were acknowledgments of the cancellation of the bonds, under the Act of 1859-60, Ch. 90, previously paid in. The receipts, as to the endorsed bonds, show that we did not attempt to pay these endorsed bond debts in any but the identical endorsed bonds; while the State loan we paid in any six per cent. bonds of the State without reference to what they were issued for, whether for railroads or

any purely State purpose. The Exhibits are marked 49
Nos. 1, 2, 3, 4, 5, 6.

The Government of the United States, by its military authorities, and for military purposes, occupied and operated the road for about three years during the war, to the exclusion of the company, its agents and officers, and without compensation to the company, so far as I know. During the war the interest falling due, and unpaid by the company on its debt to the State for the State loan, on its bonds endorsed by the State, and on the 50
other outstanding bonds of the company, accumulated to the amounts following:

On State loan	$155,550 00
On bonds endorsed by the State	21,030 00
On mortgage bonds	98,910 00
Total July 1st, 1865	$275,490 00

After we made payments annually and semi-an- 51
nually of money or bonds to the State, under the Sinking Fund provisions of the 7th Section of the Act of 1852, Ch. 151, these funds thus paid to the State were no longer subject to or controlled by the companies, but were managed and controlled by the officers and agents of the State, as belonging to the State, and without accountability to the railroad companies. The practical financial effect of our annual payments to the State, under the Sinking Fund provisions, up to the 4th day of June, 1862, 52
when the last payment was made under my presidency, was the discharge of $125,000.00 of our State loan debt to the State, and the retiring of that amount of State bonds that had been issued for any and all purposes, as we had bought any State six per cent. bonds we found on the market without reference to the purpose for which they were issued;

and as they all bore the same price, whether issued to railroads or for any other purely State purpose.

The annual payments by the other railroad companies produced a like effect to the extent of those payments. If this scheme of the original act had been carried out, unobstructed by the war, or other adverse events, the final result would have been that the railroad companies, before the maturity of the bonds lent to them, respectively, would have paid the full amount of their respective debts to the State for the State loans to them, by retiring to the State that amount of the State's own six per cent. bonds.

As the 7th section allowed us to buy and pay into the State Treasury, and we did buy and pay in any Tennessee six per cent. bonds without regard as to whether issued as loans to railroads or for any purely State purpose, many State bonds issued for other purposes that as loans to railroads, no doubt were retired and would necessarily have been so retired, leaving a like amount of the bonds issued to railroads outstanding, and wholly unprovided for, except so far as the good faith and credit of the State secured them. That thus, many bonds issued to the railroads would have been left outstanding, was a result following necessarily from that provision or stipulation of the 7th section of the first act, allowing the railroad companies to make their annual payments by buying any bonds of the State of Tennessee, and paying them into the Treasury of the State after assigning them to the Governor. Bonds so paid in were a perfect security to the State for the debt of the railroads to her, but were necessarily unavailable to a holder of outstanding State bonds. As to the State, the operation of this provision if carried out was to secure to her the payment of the full amount of the State loans to the railroads; and during the process and periods of payment to maintain all her six per cent. bonds

issued for any purpose at one uniform price, and 57
this was the actual fact, uniformity of prices as to
all her six per cent. bonds. As to the railroads, the
operation of this stipulation or provision was to se-
cure to each of them the privilege of paying their
State loan debt in any State six per cent. bonds,
which they could do with greater facility and cer-
tainty than if required to hunt up the particular
bonds issued to them. As to the bonds themselves
the operation of this provision was to benefit them,
by giving them all the same chance to be retired by 58
any railroad purchase, and by increasing the State's
ability to pay as her debt was diminished. When
I made the last payment on the 4th of June, 1862,
of $100,000 in State bonds, the payments of the East
Tennessee and Georgia Railroad Company, were
three years ahead of the requirements of the sinking
fund provision, although they, the sinking fund
requirements, were suspended by statute, and had
we not been prevented by the disasters of the war,
taking away our road and destroying our income, 59
I would have continued to make the payments as
fast and large as our means would have enabled us,
until we had paid the State loan debt in full to the
State in her own bonds or money, and extinguished
our liability unless otherwise ordered by the direc-
tors. The only possible way the interest accruing on
the State bonds paid into the State Treasury annually
by the railroads, could be made available and used
as a sinking fund, was for the State through her own
officers voluntarily to set aside so much money 60
from the funds in her Treasury; just as she would
so much of her taxes collected, or any other rev-
enues for a defined State purpose; as to meet the
expenses of her Public School, or any other State
obligation. The practical management was of her
revenues as a sinking fund to meet her own obliga-
tions.

CAMPBELL WALLACE.

I, C. D. WOODSON, a notary public in and for the city of Atlanta, in the State of Georgia, hereby certify that on the second and third days of October, 1879, in the office of the Merchants' Bank of Atlanta, and in said city of Atlanta, I was attended by the counsel, W. Y. C. Humes, for the defendants, and the witness aforesaid; that the said witness was duly sworn and examined, and this deposition was reduced to writing by me, and read by the witness, and by himself subscribed in my presence, and that Exhibits Nos. 1, 2, 3, 4, 5, 6, were introduced in said cause during the taking of said deposition.

Given under my hand and seal of office, this 3d day of October, 1879.

C. D. WOODSON,
Notary Public,
Fulton County, Ga.

(Copy.)

EXHIBIT NO. 1 TO CAMPBELL WALLACE'S DEPOSITION.

No. 2. NASHVILLE, TENN., June 30th, 1860.

Received from the East Tennessee & Georgia R. R. Co., fifteen East Tennessee & Georgia R. R. Co.'s endorsed bonds, each for one thousand dollars, and numbered as follows: Nos. 21, 34, 39, 56, 60, 61, 62, 141, 24, 52, 22, 25, 150, 55 and 146.

These bonds are received on account of the semi-annual payment due by said company as Sinking Fund, being 10,875 dollars, due on the 1st day of April, 1860, and the balance of the fifteen bonds being an advance payment due 1st October, 1860.

ISHAM G. HARRIS, *Governor.*
J. T. DUNLAP, *Comptroller.*
Com'rs of Sinking Fund.

Bonds. 65

(Copy.)

EXHIBIT NO. 2 TO CAMPBELL WALLACE'S DEPOSITION.

No. 4. NASHVILLE, TENN., Dec. 22d, 1860.

Received from the East Tennessee & Georgia R. R. Co., seven endorsed bonds, each for one thousand dollars, and numbered as follows: 134, 132, 131, 133, 135, 10, 89. These bonds are received 66
on account of the semi-annual payment due by said company as Sinking Fund on the 1st day of October, 1860, and returned to said company after cancellation, under the act of 1859-60, ch. 93, section 2.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Pres't Bank of Tenn.*
} *Com'rs of Sinking Fund.*

7 Bonds. 67

(Copy.)

EXHIBIT No. 3 TO CAMPBELL WALLACE'S DEPOSITION.

No. 12. NASHVILLE, Tenn., Feby. 5th, 1861.

Received from the East Tenn. and Georgia R. Rd. Two Tennessee State Six per cent. Bonds, each for one thousand dollars, and numbered as follows: Nos. 1,127 and 10,629, reinvestment. These bonds are received on account of the semi-annual of in- 68
terest of the old sink. fund.

J. T. DUNLAP, *Comptroller.*
G. P. SMITH, *Prest. Bank of Tenn.*
} *Comrs. of Sinking Fund.*

2 Bonds.

69 (Copy.)

EXHIBIT No. 4 TO CAMPBELL WALLACE'S DEPOSITION.

NASHVILLE, Tenn., 2d Nov., 1861.

The Sinking Fund Commissioners have this day cancelled fourteen straight six per cent. coupon bonds of the State of Tennessee, each for one thousand dollars, belonging to the sinking fund of the
70 East Tenn. and Georgia R. Rd. Company, and placed the amount, fourteen thousand dollars, to the credit of said East Tenn. and Georgia R. Rd. Co. The above fourteen bonds thus cancelled were put into the sinking fund of the East Tenn. and Geo. R. Rd. Co. in place of twelve East Tenn. and Va. R. Rd. Co.'s endorsed bonds, and two Nash. and Chatta. R. Rd. Co.'s endorsed bonds previously purchased for account of East Tenn. and Ga. R. Rd. Co.'s sinking fund.

71 G. C. TORBETT,
J. T. DUNLAP,
Sinking Fund Commissioners.

(Copy.)

EXHIBIT No. 5 TO CAMPBELL WALLACE'S DEPOSITION.

72 NASHVILLE, Tenn., Nov. 20, 1861.

Received from the East Tennessee and Georgia Railroad Company, nine Tennessee State six per cent. bonds, each for one thousand dollars, and numbered as follows: Nos. 4,333, 4,334, 5,851, 9,584, 9,086, 7,115, 10,415, 4,332, 2,068. These bonds are received on account of the payment due by said company as sinking fund, when next called

for, and are now cancelled under act of 1859-60, ch. 93. 73

ISHAM G. HARRIS, *Governor*,
J. T. DUNLAP, *Comptroller*,
G. C. TORBETT, *Prest. Bank of Tenn.*
} *Comr. of Sinking Fund.*

9 Bonds.

74

(Copy.)

EXHIBIT No. 6 TO CAMPBELL WALLACE'S DEPOSITION.

CHATTANOOGA, TENN., June 4th, 1862.

Received from the East Tenn. & Ga. Railroad Co. one hundred Tennessee six per cent. bonds, each for one thousand dollars.

These bonds are received on account of the payment due by said company as sinking fund, and are now cancelled under Act of 1859-60, Ch. 93. 75

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tenn.

100 Bonds.

76

CHATTANOOGA, June 4th, 1862.

Received from the East Tenn. & Ga. R. Rd. Company eleven endorsed bonds, each for one thousand dollars, and numbered as follows: 42, 43, 59, 79, 49, 45, 50, 100, 51, 46 and 27. These bonds are received on account of the payment due by said company as sinking fund, and after cancellation re-

77 turned to said company, under Act of 1859–60, Ch. 93, Sec. 2.

ISHAM G. HARRIS,
Governor.

G. C. TORBETT,
Pres't Bank of Tennessee.

I, G. W. Blackburn, certify the above is a true copy of the original, on file in my office.

78 In witness whereof, I have hereunto set my hand and seal of office, this 1st day of February, 1868.

G. W. BLACKBURN,
Compt.

79

80

Deposition of Perez Dickinson.

Eastern District of Tennessee.

Be it remembered that on the 27th day of September, 1879, before me, A. R. Humes, Clerk of the United States Circuit Court, for the Eastern District of Tennessee, at my office in the City of Knoxville, within said District, and the Sixth Circuit, was produced and personally came Perez Dickinson, witness on the part and behalf of the defendants in a certain suit now pending and undetermined in the Circuit Court of the United States for the Western District of Tennessee, wherein Calvin Amory Stevens, *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co. are complainants, and the Memphis & Charleston Railroad Company and the East Tennessee, Virginia & Georgia Railroad Company are defendants, to depose and the truth to say in said suit.

And thereupon the said Perez Dickinson, being of lawful age and sound mind, being by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross interrogatories propounded to him, depose and say as follows:

I have been a resident citizen and merchant of Knoxville, Tennessee, for more than forty years.

On the reorganization of the East Tennessee and Virginia Railroad in 1865 or 1866, after the war, I

5 became, at the request of the then President, John R. Branner, a Director, and was associated with him for several years up to 1869 or 1870, in the effort to rehabilitate the road and put it into successful operation as a common carrier. We were frequently annoyed by the legislation of the State; and to obviate this difficulty and obstacle to the successful management and operations of the East Tennessee and Virginia Railroad Company, I advised Mr. Branner, as President of said Road, prior to
6 the passage of the Acts of 1869 and of 1870, to originate some plan and to adopt some measure by which we could get rid of all obligations and liability to the State, and become entirely independent of the State's assumed control in appointing directors, and other vexatious legislation, and to rid ourselves of our obligations to the State by purchasing in and paying over our liabilities to the State, and thus secure a wiser and more successful management and conduct of the railroad as a common
7 carrier.

And further sayeth not.

PEREZ DICKINSON.

8

Deposition of John M. Fleming.

THE UNITED STATES OF AMERICA, } ss.:
Eastern District of Tennessee. }

Be it remembered, that on the 26th day of September, 1879, before me, Clerk of the United States Circuit Court for the Eastern District of Tennessee, at my office, personally came JOHN M. FLEMING, witness on the part and behalf of the defendants in a certain suit now depending, and undetermined, in the Circuit Court of the United States for the Western district of Tennessee, wherein Calvin Amory Stevens, *et al.*, on the part of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., are complainants, and the Memphis & Charleston Railroad Company *et al.* are defendants, to depose and the truth to say in said suit. And thereupon the said John M. Fleming, being of lawful age and sound mind, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters in controversy in said suit, did, in answer to the interrogatories and cross-interrogatories propounded to him, depose and say as follows:

1*st Inter.* What is your place of residence, and how long have you resided here?

2*d Inter.* Have you any connection with or interest in any of the railroads of the State, their stocks or securities?

3*d Inter.* How long have you been a resident of the State, and what has been your occupation since you were 21?

4*th Inter.* Were you a member of the General

5 Assembly of the State of Tennessee during the years 1869 and '70, and what official position did you hold in that Assembly?

5th Inter. State the facts, reasons and public sentiments of the State which caused that General Assembly to pass the Act of January 20th, 1870, amendatory of the Act of 10th of March, 1869, enabling the railroads to retire their debts to the State and also the Act for the sales of delinquent roads at the suit of the State?

6 *6th Inter.* State whether any corrupt influences within your knowledge were used by the railroad companies, or their officials, or any of their agents to induce that legislation?

7th Inter. State who were appointed Commissioners of the State by the bills to foreclose the delinquent roads, and why were the three men elected who were?

8th Inter. State any other fact or facts which you may know which will throw light upon the inquiries 7 already propounded to you.

Answer to *Inter.* 1. I reside in Knoxville, and have lived here since May, 1855.

Ans. to 2d. None whatever.

Ans. to 3d. I was born in Tennessee, and with the exception of ten or twelve years during my boyhood, have lived within the State all my life. I am forty-six years of age. Since attaining my majority my occupation has been that of an editor and 8 lawyer; have been twice a member of the State Legislature, and for two years was State Superintendent of Public Instruction. For about twelve years, closing December, 1878, I was editor of a daily political paper in Knoxville.

Ans. to Inter. 4. I was a member of the General Assembly of the State of Tennessee for 1869–70, and a portion of 1871, and held the official position

of Chairman of the House Committee on Judiciary. 9

Ans. to Inter. 5. In answer to this interrogatory I can state in general terms and somewhat in detail "the facts and reasons" that influenced my own action as a member of the General Assembly, and, as I believe, the action of those of other members constituting a majority of the body with whom I co-operated in effecting the legislation referred to.

The General Assembly of 1869–70, when it met in October, 1869, found the State of Tennessee in a deplorable financial condition. The political and 10 social condition of the State from the close of the war up to that time may be described as having been one of disorder. The people were much and widely divided in sentiment, and the majority, for political reasons, had been deprived of the right of suffrage by State Legislature enactments. Pending this state of affairs the Legislature had made very liberal appropriations to works of internal improvements (at the instance, it is proper to say, in many cases of the disfranchised element), so 11 that on the first Monday in October, 1869, when the General Assembly met, it was found that our State debt, actual and contingent, had swollen to the appalling volume of about $40,000,000 to $42,000,000. The State Treasury was empty, the resources of the State for purposes of revenue were very much reduced, in consequence of the demoralization of our labor system and other causes, and the people were neither in a condition nor humor to submit to a heavy rate of taxation. 12

The State had made default in the payment of interest the previous July, and its bonds in consequence were much depreciated in the financial markets. The General Assembly found itself confronted with the alternative of providing for the payment of the interest on the debt, or of repudiating or indefinitely postponing it in whole or in

part. The idea of repudiation was not seriously entertained by the majority of the body, and yet it seemed utterly impracticable to provide for the interest upon the face of the debt as it then stood. To reduce the debt, therefore, to a manageable condition became a study. Upon investigation only about $120,000 of bonds were ascertained to have been illegally and fraudulently issued, and the payment of those were interdicted. The validity of the remainder of the debt was practically recognized, and the Legislature went to work to so take care of the debt as to preserve the honor of the State. An examination of the general situation disclosed the fact that a number of railroad companies to which liberal loans of bonds had been made had become hopelessly insolvent. They had ceased to pay interest on the loans, their roads were unfinished and in the hands of Receivers appointed by the Governor, under the terms of the General Internal Improvement Acts. These roads, instead of paying expenses, were a burden upon the State Treasury. The rolling stock was wearing out without hope of replenishment, and the roads themselves rapidly going to decay. I had, myself, for several months before my election advocated through my newspaper the sale of all the defaulting roads as a measure of good State economy, and I was the author of the original bill providing for their sale.

My recollection is that the original bill, which was by no means perfect, but only designed as the basis upon which to elaborate a more perfect bill, was drafted by me in my own room, and offered in the House, without consultation with any one. The original bill was referred to the Judiciary Committee, to which committee I presented a more elaborate bill as a substitute for the original, and my recollection is that the latter bill was reported by the committee in lieu of the original, and with some

amendments finally became a law. The Commis- 17
sioners appointed by the act, having selected their attorneys, undertook to proceed with their duties, but discovered, as they reported, that the law was insufficient, inasmuch as proper authority for proceeding in chancery for foreclosure had not been confirmed by the act. Thereupon a new bill, prepared, I believe, by the Commissioners and their attorneys, was presented and enacted, and under *that* law the defaulting roads were sold. The purpose of their sale, as before intimated, was to save 18
as much as possible of the State's failing securities and utilize them in the reduction of the bonded debt. Subsequently to the introduction of the bill above described, and before its passage, the bill was introduced, which became a law on the 20th of January, 1870, enabling the debtor railroads to retire their indebtedness by discharging it with bonds of a series. This act was designed to remove and did remove the restriction that had been placed upon the railroad companies by the proviso to the 19
act of 10th March, 1869, which restriction limited the payments by railroad companies, that had issued second mortgage bonds, to the same series of bonds to which the bonds belonged that had been issued to them. It was not considered that the bill (the act of July 20th, 1870) conferred any *new* rights or privileges upon the companies, but that it simply restored the privilege enjoyed under the Sinking Fund clause of the Internal Improvement Act of 1852, under which it was understood the 20
railroad companies had discharged their amount indebtedness for years in bonds of the State without regard to series. This principle had been recognized from the establishment of our Internal Improvement System, by both the Executive and Legislative departments of State, and the General Assembly of 1869-70, in passing the Act of January

21 2d, 1870, did not regard it as any innovation upon the long settled policy of the commonwealth in regard to such settlements. But a few years before, the State, with the concurrence of all departments of the Government (the Attorney-General having sanctioned the proceeding), had settled with the Louisville and Nashville Railroad Company, receiving bonds in payment without regard to series. And this settlement was made by virtue of the provisions of the Act of 1852 and amendments thereto,
22 above referred to. This Act of Jan. 20th, was believed to be inherently just but there was another consideration moving the Legislature to its enactment. The called solvent roads that were expected to avail themselves of its provisions were in an embarrassed condition. They had but recently been restored from military possession to the possession of the companies. They were struggling for rehabilitation under very discouraging circumstances. There was a general desire for their resuscitation and re-estab-
23 lishment as permanent thoroughfares for our commerce, but it was apprehended that under the pressure of accumulated debt and impaired credit they would soon be compelled to suspend their payments to the State, be classified as defaulting roads, and pass into the hands of receivers, and ultimately be sacrificed at immense loss both to the State and the companies, and in their view of the case it was regarded as a measure of sound and healthful policy for all the interests involved to accept from the so-
24 called solvent companies in discharge of their debts the bonds of the State, of any series, and to permit them to issue *pro tanto* their own first mortgage bonds, the two-fold object having the reduction of the debt of our State and the rehabilitation of our railroad system. These two measures, the bill to sell the defaulting railroads, and the bill to enable railroad companies to retire their debts, were re-

garded as kindred measures, and progressed almost 25
pari passu, though differing considerably in the date of final passage. The friends of one measure were generally the friends of the other, the purpose in the minds of the majority being to reduce the volume of the public debt to manageable proportions, and to marshal all available assets of the State for that purpose. As a result of the operation of the two measures the volume of the debt was reduced to about $20,000,000, a sum which, with judicious management, I think might have been car- 26
ried by the State with comparative ease. Such are the principal facts and reasons that influenced my own action, and, as I believe, controlled the action of the majority of the members of the General Assembly of 1869–70. In regard to the legislature referred to in the interrogatory as to the "public sentiments of the State" in reference to the two measures, I can only say that while they were pending they seemed to command almost universal approval. Their passage was certainly generally acqui- 27
esced in. It was not until after the refunding of the State debt in 1873, when there arose a somewhat clamorous outcry against the validity of portions of the public debt, that there was manifested any serious popular dissatisfaction with either of the measures referred to. Notwithstanding the investigation of a joint select committee, of which I was a member, had shown that in some cases there had been irregularities in the procurement of bonds from the State, the legality of their issuance and the val- 28
idity of the debt had not been seriously disputed until 1873, as before stated, nor had the propriety and wisdom of the legislature referred to until then become a subject of grave popular complaint. Such is my recollection.

Ans. to Inter. 6.—No such influences were used by any of said parties within my knowledge.

Ans. to Inter. 7.—The commissioners appointed by the Legislature to sell the defaulting railroads were Hon. R. J. McKinney, Hon. Archibald Wright and Hon. Francis B. Fogg. The first two named had been Judges of our Supreme Court of Tennessee, and the last named was a lawyer of advanced age and marked eminence. All three were conspicuous personages in the Commonwealth, in whose integrity the whole population had confidence. It was because of their ability and universally recognized incorruptibility that they were selected as commissioners by the General Assembly.

Ans. to Inter. 8.—I believe no other material and relevant fact occurs to me calculated to throw light upon the inquiries propounded to me.

And further deponent saith not.

(Signed) JNO. M. FLEMING.

1

Deposition of Maney Bell.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the RAILROAD COMPANY,

versus

THE RAILROAD COMPANY *et al.*

2

Deposition of Maney Bell, witness for defendants, taken in Nashville, Tennessee, March 15th, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement,

Present—W. Y. C. HUMES, *for Defendants.* 4

MANEY BELL, being first duly sworn, deposed as follows:

My name is Maney Bell; am 30 years of age; reside at present in Nashville; am now and have been

since October, 1873, except a period of seventeen months, ten months from 1st of May, 1874, to 1st March, 1875, and seven months from March, 1877, to December, 1877, a clerk in the office of the Secretary of State for Tennessee; have in the office of Secretary ofState books containing receipts for bonds of the State of Tennessee issued to turnpike companies, banks, railroad companies, agricultural bureau, and for the purchase of the Hermitage, and construction of the State Capitol, and also for bonds issued under acts to fund the past due indebtedness of the State given by the agents appointed to receive bonds of the State issued for above purposes respectively; these books contain receipts dated from 1836 to 1877; copies of receipt for each of above purposes are made a part of this deposition and are marked respectively Exhibits A., B., C., D., E., F., G., and H., I., J., K., L., and M.; said receipts show number of bonds received, numbers of bonds, date and series, and purpose for which the bonds are to be issued; this was the rule, but there were exceptions in which they failed to specify the series; for every bond issued by the State as shown by these books, whether for State, turnpike, railroad, or other purpose, receipts were given by the agents appointed to receive them, except I find no receipts for special issues to Bank of Tennessee under act of 1832; the bonds issued for all purposes by the State after passage of the Internal Improvement Act of February 11th, 1852, were issued of the current series, except the bonds issued to the Capitol Commissioners to be used only in the construction of the State Capitol, and two special issues of bonds (40 bonds), issued to turnpike companies. All bonds issued by the State prior to 1852, with the exception of the Series White "A" issued under Act of 1838, were special issues—in all, 3,500 bonds, special issues, about 500 of

which are still outstanding. Each series of bonds 9
was distinguished by letter or color, or both, and by words on the face of the bond, showing under what act or acts it was issued, its number and date of maturity. There were several separate series of bonds issued under the Internal Improvement Act of Feb. 11th, 1852, and acts amendatory thereto, viz.: Series B white, C white, B green, and Series Green Bonds not lettered. I give order in which the different series were issued under Internal Improvement Act and its amendments, with number of 10
bonds and date of maturity.

Series "B" white, Nos.	1	to	7,958,	due in	1892
" " "	7,909	"	11,806,	"	1898
" "C" " "	1	"	1,878,	"	1898
" No lettter green "	1	"	8,470,	"	1892
" " " "	8,471	"	10,000,	"	1900
" "B" " "	1	"	5,203,	"	1900

Bonds of a particular series, issued under Act of 1851-2 and its amendments, were not confined to 11
a particular railroad company or other internal improvement, but were issued alike for every purpose as application was made under the Acts. For example, of the Series "B" white, issued under said Act of Feb. 11th, 1852, 48 were issued for purchase of the Hermitage, 30 bonds to the Agricultural Bureau, and others to a Turnpike Company. Nearly every railroad received bonds of two or more series. The rule of issuing bonds, as shown by the receipts, was to issue to each proper appli- 12
cant bonds whose number began with the number next after number of bond last issued, and of the current series. As to the question: "When was the fact first made known to the public of the numbers of the different series of bonds, and to what parties or corporations issued?" I answer that I find a printed statement in the form of a circular, issued

by Pennebaker, Comptroller, under date of July 25, 1870, setting forth the facts, but do not know that it was distributed generally ; the fact first appears in the reports of the Comptroller in a report to the General Assembly of 1875, by Jno. C. Burch, Comptroller. The receipt books show that all bonds of the State, for whatever purpose issued, and of whatever series, were numbered consecutively from No. 1 to end of series, and that receipts were required and given for same from 1838 to 1877.

The New Series Funding Bonds, Green F, issued under Act of 1873, were issued for past due bonds and coupons of the State, and when $1,000 in past due coupons were presented, no matter from what series of Bonds, or for what purpose or to what Company or Companies, the Bonds from which they were clipped were issued a new bond of the Funding Bond series, was issued in lieu. But as the greater part of the Funding Bond series was issued in lots of two up, it would be impossible to say that any particular coupon was taken up by any particular bond of the lot. As an illustration, I give this instance, taken from funding books of 1873 : $12,990 in past due coupons (being coupons cut from 44 State bonds), and $10 in currency, making $13,000, was funded into New Series Funding Bonds, Nos. 455 to 467, date of transaction August 22d, 1873. These coupon were clipped from Bonds for following purposes :

Series.	Originally issued to.	No. Coupons.	No. Bonds.	Am't.
White B.,	Memphis & Charleston R.R.,	10 Coupons each,	from 5 Bonds,	$1,500.
"	East Tenn. & Geo.,	10 " "	1 "	300
"	Memphis & Ohio,	10 " "	5 "	1,500
"	McMinville & Manchester,	10 " "	6 "	1,800
"	Mississippi & Tenn.,	10 " "	1 "	300
"	East Tenn. & Va.,	10 " "	3 "	900
"	Memphis & Charleston,	10 " "	1 "	300
"	Mississippi Cent'l & Tenn.,	10 " "	1 "	300
"	Mobile & Ohio,	10 " "	1 "	300
"	Louisville & Nashville,	10 " "	1 "	300
"	Memphis, Cl'ksvlle & Louisville	10 " "	3 "	900
"	Nashville & Northwestern,	10 " "	2 "	600
White D.,	Funding Bonds 1866,	10 " "	8 "	2,400
Green ——	Memphis, Clk'sville & Lou'ville,	3 " "	1 "	90
"	" " "	10 " "	1 "	300
	Memphis & Ohio,	10 " "	1 "	300
	East Tenn. & Va.,	10 " "	1 "	300
	Cin., Cum. Gap & Charleston,	10 " "	2 "	600
	Cash,			10
				$13,000

Therefore could only say that any particular coupon in above lot was taken up by New Series Funding Bonds, Nos. 455 and 467, and further saith not.

MANEY BELL.

Subscribed and sworn to before me, March 6th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A."

Nashville, Murfreesboro & Shelbyville Turnpike Company.

Capital Stock, $200,000.

WHEREAS, the undersigned are of opinion that two-thirds of the capital stock of the "Nashville, Murfreesboro & Shelbyville Turnpike Company have been subscribed by individuals and other corporations, and are well secured. Now, therefore,

21 we do hereby agree that the Governor subscribe, on behalf of the State, for the remaining third of said capital stock (being $66,666\frac{2}{3}$), agreeable to the provision of an act, entitled "an act to encourage internal improvement in the State," passed February 19th, 1836.

In testimony whereof, we have hereunto set our hands, this 23d day of Jan'y, 1836.

N. CANNON.

22 LUKE LEA,
Secretary of State.
DANIEL GRAHAM,
Comptroller.
MILLER FRANCIS,
Treasurer.

Bonds issued 25th July, 1836.

23 ———

EXHIBIT B.

HIWASSEE RAILROAD COMPANY.

NASHVILLE, November 3, 1838.

$97,000.

Received of Newton Cannon, Governor of Ten-
24 nessee, 97 State bonds, from No. 2 to 98, dated the 1st day of November, 1838, issued for the benefit of the Hiwassee Railroad Company.

W. NICHOL,
President of the Bank of Tennessee.

EXHIBIT C.

Bonds for State Capitol.

NASHVILLE, April 1st, 1848.

$50,000.

Received of Neil S. Brown, Governor of the State of Tennessee, two hundred State bonds, letter A, from number one to number two hundred inclusive, of these and all intermediate numbers of the denomination of two hundred and fifty dollars each, bearing date the 1st day of April, 1848, which bonds are issued under the authority and the description as provided for in the 3d Section of an Act passed by the General Assembly of the State of Tennessee on the 24th January, 1848, entitled "an Act to continue the construction of the State Capital."

JNO. M. BASS,

President of the Board of Commission to Superintend the erection of the State House.

EXHIBIT D.

NASHVILLE, May 15th, 1850.

Received of William Trousdale, Governor of the State of Tennessee, twenty-one State bonds of one thousand dollars each, $21,000, being No. 765 to No. 785 inclusive, letter A, dated 13th May, 1850, issued for the benefit of the East Tennessee and Georgia Railroad Company.

WM. LEDBETTER,

President.

29 EXHIBIT E.

Received of Andrew Johnson, Governor of the State of Tennessee, forty-eight coupon bonds of the State of Tennessee, dated the first of January, 1856, and falling due first of January, 1890, first coupon falling due first of July, 1856, issued in pursuance of an Act entitled "an Act to purchase the Hermitage passed February 11th, 1866, commencing at 3,538 to 3,585, both of these numbers inclusive, on
30 the issuance of the above bond the coupon falling due first of July, 1856, on the following bonds was cut off 3,538-9-40-41-42-43-44-45-46 and destroyed.

March 29th, 1856.

A. JACKSON.

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31 EXHIBIT F.

Received of Andrew Johnson, Governor of Tennessee, thirty coupon bonds of said State for one thousand dollars each, from No. 4,442 to 4,471, both these numbers inclusive, bearing interest six per cent., first coupon falling due 1st January, 1857, bonds falling due 1st January, 1892, principle payable in New York; said bonds are issued in pursuance of the sixth Section of an Act passed 18th
32 February, 1856, entitled "an Act to amend an Act entitled an Act to establish a State Agricultural Bureau, &c., and for the purpose of purchasing permanent fair grounds and for other purposes."

July 19, 1856.

S. R. COCKRILL.
J. SHELBY.
W. G. HARDING.

EXHIBIT G. 33

COMPTROLLER'S OFFICE,

NASHVILLE, TENN., April 2, 1866.

A. Crawford has this day deposited in my office one thousand and twenty-six past due coupons of the bonds of the State of Tennessee for thirty dollars each, and two hundred and twenty dollars in cash, amounting to thirty-one thousand dollars, for which he is entitled to six per cent. coupon bonds of the State, under the Act passed 23d November, 1865. 34

S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE,
Executive Department,
NASHVILLE, Tenn., April 2, 1866.

$31,000.

No. 169 to No. 199. 35

Received of W. G. Brownlow, Governor of the State of Tennessee, thirty-one of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1891, and numbered from 169 to 199, inclusive. First coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons off the bonds of the State which are filed with Comptroller of the Treasury. 36

Given under my hand this 2d day of April, 1866.

A. CRAWFORD.

37 EXHIBIT H.

Bonds Issued to Comptroller.

NASHVILLE, Tennessee, February, 1869.

No. 1,701 to 2,200.

Received this day of William G. Brownlow, Governor of the State of Tennessee, five hundred of the six per cent. coupon bonds of said State for one thousand dollars each, principal and interest payable in the City of New York. The bonds fall due
38 the first of January, 1900. The first coupons fall due the 1st of July, 1870. Said bonds are of the Green issue, denoted by the letter C, and numbered from 1,701 to 2,200, both numbers inclusive, and are issued to the Comptroller under the Act of September 5, 1868, entitled "An Act to regulate the State finances."

G. W. BLACKBURN,
Comp't.

39 ———

EXHIBIT I

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

Nos. 160 to 522.

NASHVILLE, Tenn., Sept. 21st, 1868.

Received, this day, of W. G. Brownlow, Gov-
40 ernor of Tennessee, three hundred and sixty-three bonds of said State, for one thousand dollars each, principal and interest payable in New York. The bonds fall due the 1st day of January, 1900, and the first coupons fall due the 1st day of January, 1869. Said bonds are issued to the Comptroller for the renewing of the bonds of the State that fell due the 7th day of May, 1868, under the Act of

Sept. 5th, 1868, entitled "An Act to provide for the 41
renewing of the Bonds of the State," etc. Said bonds of the green issue, letter C, and numbered from 160 to 522, both numbers inclusive.

G. W. BLACKBURN,
Comptl.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 160 to 522 42
inclusive, the original of which is now of record at my office.

In testimony whereof I have hereunto subscribed my official signature, and, by order of the Governor, [SEAL.] affixed the Great Seal of the State of Tennessee, at the Department, in the city of Nashville, this 18th day of March, A. D. 1880.

43

CHAS. N. GIBBS,
Secretary of State.

EXHIBIT J

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 523 to 1,000. 44

NASHVILLE, Tenn., Oct. 16, 1868.

Received, this day, of W. G. Brownlow, Governor of the State of Tennessee, four hundred and seventy-eight (478) of the bonds of said State, for one thousand dollars each, payable in New York, 1st day of January, 1900. The first coupons falling

45 due July 1st, 1869. Said bonds are of the green issue, of series C, and numbered from 523 to 1,000 inclusive. Said bonds are issued to the Comptroller for the renewing of the bonds of the State that fall due the 7th of May, 1868, under the Act of Sept. 5th, 1868, entitled "An Act to provide for the renewing of the bonds of the State," &c.

G. W. BLACKBURN,
Compt.

46 I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of State for State bonds, series C, from No. 523 to 1,000 inclusive, the original of which is now of record at my office.

In testimony whereof I have hereunto subscribed my official signature, and, by the order of the Governor, [SEAL.] affixed the Great Seal of the State of Tennessee, at the Department, 47 in the city of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
Secretary of State.

EXHIBIT K

To Maney Bell's Deposition.

48

BONDS ISSUED TO COMPTROLLER.

No. 1001 to 1400.

NASHVILLE, TENN., September 21st, 1868.

Received of W. G. Brownlow, Governor of the State of Tennessee, four hundred of the six per cent. coupon bonds of said State, for one thousand dol-

lars each, principal and interest payable in New 49
York—The bonds on the 1st day of January, 1900; said bonds are of the Green issue of the series C, and numbered from 1001 to 1400, both numbers inclusive. Said bonds are issued to the Comptroller of the State, under the act passed Sept. 5th, 1868, entitled "an act to provide for the renewing of the bonds of the State, &c.," to enable said officer to negotiate a loan for the purpose of discharging the liabilities of the State.

G. W. BLACKBURN, 50
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 1001 to 1400 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature; and, by order of the Governor, affixed the Great Seal of the State of 51
Tennessee, at the Department in the City of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
(SEAL.) *Sec'y of State.*

52

53 EXHIBIT L

To Maney Bell's Deposition.

BONDS ISSUED TO COMPTROLLER.

No. 1401 to 1700.

NASHVILLE, TENN., Oct. 9, 1868.

Received of W. G. Brownlow, Governor of the State of Tennessee, three hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in New
54 York, the principal on the 1st day of January, 1900, and the first coupons on the 1st day of January, 1869. Said bonds are of the Green issue and of the series——, and are numbered from 1401 to 1700, both numbers inclusive, and are issued to the Comptroller of the State under the act of Sept. 5th, 1868, entitled an act to regulate the finances of the State.

G. W. BLACKBURN,
Compt.

55 I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, from No. 1401 to 1700 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature, and, by order of the Governor, affixed the Great Seal of the State of Tennessee, at the Department in the City of Nashville, the 18th day of March, A. D. 1880.

56 CHAS. N. GIBBS,
Sec'y of State.

EXHIBIT M

To Maney Bell's Deposition.

BONDS ISSUED TO THE COMPTROLLER.

No. 1701 to 2200.

NASHVILLE, TENN., Feb'y, 1869.

Received this day of William G. Brownlow, Governor of the State of Tennessee, five hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in the City of New York. The bonds fall due the first day of January, 1900; the first coupons fall due the 1st of July, 1870. Said bonds are of the Green issue, denoted by the letter C, and numbered from 1701 to 2200, both numbers inclusive, and are issued to the Comptroller under the act of September 5, 1868, entitled "an act to regulate the State finances."

G. W. BLACKBURN,
Compt.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt given by the Comptroller of the State for State bonds, series C, from No. 1701 to 2200 inclusive, the original of which is now of record at my office. In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the Great Seal of the State of Tennessee at the Department, in the City of Nashville, this 18th day of March, A. D. 1880.

CHAS. N. GIBBS,
Sec'y of State.

(SEAL.)

1

Deposition of Jas. L. Gaines.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, Issued to the RAILROAD COMPANY,

2

versus

THE RAILROAD COMPANY *et al.*

Deposition of JAS. L. GAINES; witness for defendants, taken in Nashville, Tennessee, March 16th, 1880, before L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for Defendant.*

JAS. L. GAINES, being first duly sworn, deposed as follows: 4

My name is Jas. L. Gaines, I am forty years old; I reside in Nashville, and hold the office of State Comptroller, which position I have

filled since February, 1875. From my familiarity with the books in the office of Secretary of State, I can say that there has been kept since 1836 a record of all the bonds issued by the State, giving a description of the bonds by numbers, dates of issuance and maturity, rate of interest, color, &c. From handling a great many of the bonds of the State I am satisfied, that the name of the railroad to which the bonds were issued under the Internal Improvement Act of 1851–2, were not written in or upon the bonds. The bonds of the State issued before the war to the railroad companies under the Internal Improvement Act of 1851–2, and amendments, had nearly or about forty years to run to maturity from date of issuance; those issued after the war under the same Act and amendments, matured in about twenty-five years and thirty years from date of issuance. I think all the State's obligations before the war were promptly met. In 1860 the following was the assessed valuation of the taxable property in the State, viz: Real estate $250,626,530; slaves, $115,609,554, and other personalty $22,700,755, total $388,936,844. In 1867 the assessed valuation was as follows: Real estate $214,284,584; personal property $11,108,826; total $225,393,410. Under our system of Internal Improvements the Nashville and Chattanooga Railroad was the first railroad completed in the State, and it was completed I think in about the year 1855. I have no data from which to ascertain the exact bond liability of the State on the 11th day of February, 1852, but the official report of the comptroller, under date "October 1851," places the total (bond) liabilities of the State at $3,651,856.66. As shown by the books of this office and by "settlement made by legislative committee December, 1868," the East Tennessee & Virginia Railroad was in default for four years to January 1st, 1866, in the sum of $249,378.55 in pay-

ing the interest on the bonds issued to the road by 9
the State ; and this sum or balance was merged into
or added to the bond account of said railroad. From
January, 1866 to January, 1869, the balance due on
interest account by East Tennessee & Virginia Rail-
road was $52,793.93. This balance was paid Janu-
ary 11, 1869, and the July, 1869, instalment of inter-
est was paid in July 1869, except $2,143.25 which
was paid September 22, 1869. On account of the
two instalments due January 1, 1870, and February
1, 1870, this road was in default something over 10
$100,000.00. The same statement of facts applies
as to the East Tennessee & Georgia Railroad, about
the only difference being as to *amounts* of default.
The same may be said of the Memphis & Charles-
ton Railroad, which defaulted on interest payments
during the war, and from time to time up to final
settlement of its indebtedness. The Knoxville &
Kentucky and the Cincinnati, Cumberland Gap &
Charleston Railroad defaulted on all interest pay-
ments after January 1, 1868, to date of sale of roads 11
by the State. Under the Act of February 25, 1869,
and of January 20, 1870, the East Tennessee, Vir-
ginia & Georgia Railroad Company did, on or about
1st August, 1870, as shown by the books of this
office, pay and satisfy to the State of Tennessee the
entire indebtedness respectively of the East Tennes-
see & Virginia Railroad and of the East Tennessee
& Georgia Railroad, for and in respect of all the
bonds (including accrued interest on same up to
July 1, 1870) which had been issued to or loaned to 12
these roads by the State under the Internal Improve-
ment Act of February 11, 1852, and Acts amenda-
tory thereto. The total amount thus paid was
$4,117,761.10, of which there was paid in 6% bonds
of the State $3,835,000 00
And in past due coupons 282,750 00
And in cash 11 10

13 On the 25th July, 1877, Mess. A. Iselin & Co. paid to the State of Tennessee under the Acts of 1859 and 1870, above referred to, the entire indebtedness to the State, of the Memphis & Charleston Railroad, for and in respect of the bonds which had been issued to it under the Act of 1851-2, and amendments, including all the principal and accrued interest on the same. The total amount thus paid by Mess. Iselin & Co., was.....$1,736,920 00
Of which there was paid in 6% bonds of
14 the State..... 1,648,000 00
And in past due coupons..... 88,920 00

The Knoxville & Kentucky Railroad and the Cincinnati, Cumberland Gap & Charleston Railroad were sold by the State under the provisions of the law for the sale and lease of delinquent railroads. The former (K & K) road was sold October 10, 1871, to Mess. W. B. Johnson, C. M. McGhee, and others for the sum of $350,000.00, which sum was paid as follows:

15
240 bonds, with January, 1871, and subsequent coupons attached..... $240,000 00
3 bonds with July, 1874, coupons..... 4,479 33
Past due coupons..... 7,500 00
Cash..... 20 67

The date of first payment being October 16th, 1871, and the date of the last payment September 24th, 1874.

The Cincinnati, Cumberland Gap and Charleston
16 Railroad, was sold October 16th, 1871, to Messrs. R. T. Wilson and C. M. McGhee, for the sum of $300,000.00, and payments were made as follows, viz.: 300 Tennessee bonds with January, 1871, and subsequent coupons attached, $300,000.00.

During the late civil war the several railroads did default in paying to the State the interest on their indebtedness to the State for the amount of State

bonds issued respectively to said railroad companies, as follows: the defaults as given, being for the four years to January 1st, 1866: 17

East Tenn. & Virginia Railroad	$249,378 55
East Tenn. & Georgia "	180,277 50
Edgefield & Kentucky "	200,167 85
Central Southern "	128,600 00
Cin., Cumb. Gap Charleston Railroad	31,680 00
Knoxville & Kentucky Railroad	43,200 00
McMinnville & Manchester Railroad	87,360 00
Mem., Clarksville & Louisville R. R.	312,600 00
Memphis & Charleston Railroad	185,387 45
Memphis & Ohio Railroad	403,110 00
Mississippi & Tenn. Railroad	22,800 00
Mobile & Ohio Railroad	388,800 00
Mississippi Central & Tenn. R. R. Co.	75,180 00
Nashville & Northwestern Railroad	392,400 00
Rogersville & Jefferson Railroad	38,160 00
Tennessee & Alabama Railroad	225,016 00
Winchester & Alabama Railroad	143,259 00

18

19

At the dates of the final settlement of their respective indebtedness the several solvent roads or the roads which retired their debts under the Acts 1869–70, were in default as to interest payment as follows:

East Tennessee & Virginia R. R. (bal. January & July, 70)	$113,832 15	
East Tenn. & Georgia R. R. "	86,612 86	
Memphis & Charleston " about	15,000 00	on account Jan., 1877.
Nashville & Decatur R. R. (Jan., 1871)	237,821 10	
Mobile & Ohio R. R. (Jan., 1872).	100,000 00	July, 1871 and Jan., 1872.
Mississippi & Central	94,035 73	

20

On first July, 1870, the several delinquent railroads, they were in default on interest payment, as follows.

21	Edgefield & Kentucky Railroad.....	$365,220 00
	Cin., Cumb. Gap & Charleston R. R...	210,388 00
	Knoxville & Kentucky Railroad.....	351,180 00
	McMinnville & Manchester Railroad....	214,677 20
	Winchester & Alabama Railroad.....	315,309 93
	Rogersville & Jefferson Railroad.....	96,158 40
	Nashville & Northwestern Railroad....	817,725 16
	Knoxville & Charleston Railroad.....	85,200 00
	East Tenn. & Western, N. C. R. R....	26,000 00
	Mem., Clarksville & Louisville R. R...	613,936 56

22

The State paid no interest during the war. During the four years up to July, 1869, there was paid about $4,000,000.00 on account interest on State debt. From July, 1869, to January, 1874, the State paid no interest, but the interest for this period was funded under the Act of March 17, 1873. The semi-annual instalments of interest due July, 1874, Jan., 1875, and July, 1875, were paid. The State has been in de-
23 fault since Jan., 1876, including the installment due that date. In 1870 the bond liabilities of the State amounted to about $40,000,000. I have little or no knowledge of the market value, at that time, of State bonds or of company (R. R.) bonds. The railroad settlement reduced the State's debt on outstanding bonds and coupons by about $21,000,000. The first settlement by a railroad company with the State under the Acts of 1869 and 1870 was made in August 1870, and the last settlement was
24 made in Jan., 1878. If the holders of the State bonds issued to railroads under the Internal Improvement Laws have ever instituted any suit or proceeding against the railroads, other than these suits now pending, I am not aware of it. If such suit or proceeding had been instituted I think I would have known it. I can state as a matter of fact that the East Tennessee and Virginia Railroad,

the East Tennessee and Georgia Railroad made no 25
payment on account of Sinking Fund after the war
up to date of final settlement under the Acts of
1869 and 1870; the Cincinnati, Cumberland Gap
and Charleston Railroad and the Knoxville and
Kentucky Railroad never made any payment on
account of the sinking fund; and the only credits
received by the Memphis and Charleston on said
account after the war were for the years 1872, 1873
and 1874. The amounts which ought properly to
have been paid on sinking fund account by the sev- 26
eral railroads would depend on the construction of
the several Acts passed in this connection after the
war, viz.: Act 1865–6, ch. 24, § 47; Act 1866–7, ch.
22; Act 1870, 2d Sess., ch. 69, § 1. No separate
fund or account was kept of the money paid into
the State Treasury after the war, as interest, by the
several railroad companies on their debt to the
State for the bonds loaned to them, but said money
(if the interest were paid in money), went into the
general fund the same as that derived from reve- 27
nues and other sources. The system of making
certain levies for certain purposes, and of classify-
ing and appropriating the funds accordingly, has
never obtained in this office, or in the office of the
State Treasurer. Certainly, since the war, the
State has not attempted to apply any money re-
ceived from a railroad on account of interest to the
payment, only and specifically, of the coupons of
bonds issued to the railroad from which the money
was received. In receiving and accepting coupons 28
from railroad companies, it was only required that
the coupons should be from the bonds of the State,
regardless of purpose of issuance, and that they
should be of the same date as the installment of
interest which was being paid. The railroad com-
panies, which were by the Governor put into
the hands of Receivers, not only failed to pay

29 the arrears of interest to the State, but cost the State considerable sums in her effort to them, with the exception, perhaps, of the Mississippi Central Railroad Company. The interest due July 1, 1869, from the East Tennessee and Virginia Railroad was paid by said Road. In February, 1870, a portion of the January, 1870, instalment was paid, leaving balance due on said instalment about $4,000, and no further payment was made on that account until final settlement of said road's indebtedness, under
30 the Acts of 1869 and 1870. Likewise in case East Tennessee and Georgia Railroad interest was paid from January, 1866, up to and including the interest due July, 1869. In October, 1869, $1,423.74 was paid on account interest due January, 1870, leaving balance of about $42,500 on said instalment, which was not paid until final settlement in August, 1870. As to the Memphis and Charleston Railroad there was due in May, 1870, about $7,000 on account interest past due January, 1870, from which date the
31 road was in arrears from time to time up to January, 1875, when all interest up to and including that instalment was settled in full. The instalments falling July, 1875, January, 1876, and July, 1876, were paid during the year 1876. December 15, 1876, payment was made on account of instalment falling due January 1, 1877, leaving balance due of about $15,000 on said instalment, which balance was not paid until July, 1877, when final settlement of the road's entire indebtedness
32 was paid under the Acts of 1869 and 1870. In this connection I would state that the amount of defaults on interest account by the several railroads, January 1st, 1866, as ascertained by Legislative Committee, and given in the first part of this deposition, beginning "East Tennessee and Georgia R. R. Co., $249,378.55, and ending Winchester and Alabama Railroad $143,259.00" were added respectively to

the principal due by each railroad, and in speak- 33
idg of the interest due by railroads after January, 1860, these amounts are not taken into consideration. I have no exact official data as to the amount of the bond debt of the State on 20th day of January, 1870, but the Official Report of the Comptroller, dated October, 1869, fixes the amount in July, 1869, at $39,212,244,55.

The amount paid:

By the retiring railroads,.....	$14,786,600 00 34
By the sold roads,.....	6,698,000 00
And by the Louisville and Nashville Railroad, in 1865, under a resolution of the Legislature, dated May 5th, 1865,.....	$707,631 25

Under the Act of March 17, 1873, any and all past due bonds and coupons of the State, legally issued, were fundable, and the bonds not due were to be registered. And before this Act was repealed it is believed that all the bond liability of the State was 35
either funded or registered, except about $1,000,000 00, of which amount about $400,000 00, was composed of past due bonds, not presented for renewal, and about $350,000 of bonds not presented for registration, and about $250,000 coupons not presented for funding.

I herewith append a correct

36

37

STATEMENT OF BONDS

Issued by the State of Tennessee prior to the Act 1851–52, arranged according to series showing the numbers of bonds issued, for what purpose expressly issued, when due, their present condition, etc., each bond being for $1,000, except where specially noted otherwise:

500 BONDS; Interest 5 per cent.; Issued under Act of 1832; Matured after 15, 20, 25 and 30 years.

38

WHEN ISSUED.	NO. OF BONDS.	TO WHOM ISSUED.	HOW NUMBERED.	REGISTERED, NOT CANCELLED.	REGISTERED AND CANCELLED.	CANCELLED BEFORE REGISTRATION	CANCELLED BY RENEWAL UNDER ACT DEC., '66, AND ACT MARCH, 1873.	STILL TO BE RENEWED.	STILL OUT TO BE REGISTERED	E. T. U.
Jan. 1, 1833	125	Union Bank of Tenn...	1 to 125	.....	.....	125	.....	....	....	.....
" "	125	" " " ...	1 to 125	.....	.....	125	.....	....	....	.....
" "	125	" " " ...	1 to 125	.....	.....	125	.....	....	....	.....
" "	125	" " " ...	1 to 125	.....	.....	.....	.....	125	....	.....
.....	500	.....	.....	.....	.....	375	.....	125	....	.....

Special issue of 67 Bonds; 5¼ per cent.; Matured after 25 years; Act 1836.

July 25, '36	66	Nashville, Murfreesboro' & Shelbyville T.P.Co.	1 to 66	.....	.....	66	.....	....	....	.....
" "	1	" " "	67 for $666⅔	.....	.....	1	.....	....	....	.....
.....	67	.....	.....	.....	.....	67	.....	....	....	.....

39

Special issue of 31 Bonds; 5 ¼ per cent.; Under Act of 1835-36; Matured after 25 years.

Nov. 1, '37	18	Gallatin Turnpike Co.	1 to 18	.....	.....	18	.....	....	....	.....
Mar. 31, '38	12	" " "	19 to 30	.....	.....	12	.....	....	....	.....
" "	1	" " "	31 for $500	.....	.....	1	.....	....	....	.....
.....	31	.....	.....	.....	.....	31	.....	....	....	.....

Special issue of 40 Bonds; 5¼ per cent.; Under Act 1835-6; Matured after 25 years.

Oct. 5, 1837	10	Lebanon and Nashville T. P. Co.	1 to 10	.....	.....	10	.....	....	....	.....
Nov. "	2	" " "	11 to 12	.....	.....	2	.....	....	....	.....
Jan. 1838	4	" " "	13 to 16	.....	.....	4	.....	....	....	.....
Feb. "	4	" " "	17 to 20	.....	.....	4	.....	....	....	.....
May, "	4	" " "	21 to 24	.....	.....	2	 2	....	....	.....
July, "	4	" " "	25 to 28	.....	.....	3	 1	....	....	.....
Aug., "	4	" " "	29 to 32	.....	.....	4	.....	....	....	.....
Oct. "	4	" " "	33 to 36	.....	.....	4	.....	....	....	.....
Nov. "	4	" " "	37 to 40	.....	.....	3	 1	....	....	.....
.....	40	.....	.....	.....	.....	36	 1	 3	....	.....

40

Special issue of 109 Bonds; 5¼ per cent.; Under Act 1835-6; Matured after 25 years.

Oct. 1837	.....	La Grange and Memphis R. R. Co.	1 to 30	.....	.....	30	.....	....	....	.....
" 1837	.....	" " "	31 for $1250	.....	.....	1	.....	....	....	.....
" 1838	.....	" " "	32 to 61	.....	.....	27	.....	3	....	.....
" 1838	.....	" " "	62 for $1283	.....	.....	1	.....	....	....	.....
Mar. 1839	.....	" " "	63 to 92	.....	.....	20	.....	10	....	.....
" 1839	.....	" " $2,000 each	93 for $1250	.....	.....	1	.....	....	....	.....
Sept. 1839	.....	" " "	94 to 108	.....	.....	14	.....	1	....	.....
" 1839	.....	" " "	109 for $1250	.....	.....	1	.....	....	....	.....
			210 in Lieu.	.....	.....	1	.....	....	....	.....
.....	110	.....	.....	.....	.....	96	.....	14	....	.....

41

Special issue of 2500 Bonds ; 6 per cent.; Under Act 1838 ; Matured after 30 years.

WHEN ISSUED.	NO. OF BONDS.	TO WHOM ISSUED.	HOW NUMBERED.							E. T. U.
May 7, '38	1000	Bank of Tennessee.....	1 to 1000	.....	.....	786	191	23	...	.....
July 2, '38	1500	" "	1001 to 2500	.....	.....	1500	.....	....	....	.....
		Nos. 1001 to 1100 returned and cancelled Feb'y 5, 1840.....	Under Act 1840.							
		Nos. 1101 to 2500 returned and cancelled Feb'y 27, 1840								
.....	2500	.....	.....	.....	.....	2286	191	23	....	.....

42

300 Bonds were issued under Act of 1830 to the Union Bank of Tennessee for improvement of rivers in Tennessee. They were numbered 1 to 300, 5 per cent., maturing 30 years after date. They were cancelled without being used.

43

44

45 SERIES "A."

Five per cent. Bonds; Issued under Act of 1838; Mature after 30 years.

Nov.	3,	1838.	1	Chambers and Purdy T. P. Co.	1			1			
"		"	97	Hiwassee R. R. Co.	2 to 98			70	19	8	
"		"	22	Franklin & Columbia T. P. Co.	99 to 120			13	7	2	
"		"	45	Columbia Central T. P. Co.	121 to 165			34	6	5	
"		"	15	Nashville & Charlotte T. P. Co.	166 to 180			13	2		
"	5,	"	16	Fayetteville & Shelbyville T. P. Co.	181 to 196			16			
"	24,	"	41	Gallatin T. P. Co.	197 to 237			37	3	1	
"	30,	"	24	Columbia Central T. P. Co.	238 to 261			23		1	
Jan.	3,	1839	26	Harpeth T. P. Co.	262 to 287			10	9	7	
"	4,	"	20	Cumberland & Stones River T.P.Co.	288 to 307			11	5	4	
"	5,	"	30	Lebanon & Nashville T. P. Co.	308 to 337			13	13	4	
"	7,	"	2	Chambers & Purdy T. P. Co.	338 to 339				2		
"	7,	"	6	Jefferson T. P. Co.	340 to 345			1	5		
"	9,	"	9	Nashville & Charlotte T. P. Co.	346 to 354			1	7	1	
"	21,	"	32	Louisville, Cin. & Charleston R.R.Co	355 to 386			32			
Feb.	1,	"	3	Chambers & Purdy T. P. Co.	387 to 389				3		
Mch.	2,	"	7	Pelham & Jasper T. P. Co.	390 to 396			3	3	1	
"	8,	"	5	Clarksville & Russellville T. P. Co.	397 to 401			3		2	
"	22,	"	27	Gallatin T. P. Co.	402 to 428			12	9	6	
"	25,	"	7	Forked Deer T. P. Co.	429 to 435			7			
May	3,	"	12	Columbia, Pulaski & Elkton T.P.Co	436 to 447			7	3	2	
"	14,	"	1	Chambers & Purdy T. P. Co.	448			1			
June	14,	"	6	Big Hatchie T. P. Co.	449 to 454			4	1	1	
July	10,	"	1	Gallatin & Cumberland T. P. Co.	455			1			
Aug.	13,	"	10	Nolensville T. P. Co.	456 to 465			5	3	2	
"	13,	"	15	Ashport T. P. Co	466 to 480			10	5		
Sept.	10,	"	4	Nolensville T. P. Co.	481 to 484			2	2		
"	10,	"	14	Lebanon & Sparta T. P. Co.	485 to 498			9	4	1	
"	10,	"	3	Jefferson T. P. Co.	499 to 501			1	2		
"	10,	"	98	Hiwassee R. R. Co.	502 to 591			38	46	14	
Nov.	5,	"	8	Big Hatchie T. P. Co.	600 to 607			5	3		
"	22,	"	9	Nashville & Kentucky T. P. Co.	08 to 616			5	4		
Dec.	10,	"	10	Clarksville & Russelville T. P. Co.	617 to 626			7	2	1	
Jan.	6,	1840	6	Nashville & Charlotte T. P. Co.	627 to 632			2	3	1	
"	18,	"	65	Hiwassee R. R. Co.	633 to 697			16	23	26	
"	24,	"	49	Franklin & Columbia T. P. Co.	698 to 746			16	28	5	
June	24,	"	14	Nolensville T. P. Co.	747 to 760			4	10		
"	24,	"	3	Gallatin & Cumberland T. P. Co.	761 to 763			1	2		
"	24,	"	4	Nashville & Kentucky T. P. Co.	764 to 767			1	3		
"	24,	"	34	Columbia, Pulaski & Elkton T.P.Co.	768 to 801			11	18	5	
Aug.	3,	"	11	Gallatin T. P. Co.	802 to 812			1	9	1	
"	11,	"	8	Clarksville & Russellville T. P. Co.	813 to 820			2	6		
"	11,	"	31	Lebanon & Sparta T. P. Co.	821 to 851			9	21	1	
Nov.	5,	"	18	LaGrange & Memphis R. R. Co.	852 to 869, 1 for $1,750	1	0	10	7	1	
"	10,	"	20	Ashport T. P. Co.	870 to 889			10	8	2	
"	16,	"	10	Clarksville and Russelville T.P.Co.	890 to 899			1	8	1	
"	20,	"	13	Nolensville T. P. Co.	900 to 912			2	7	4	
Dec.	9,	"	15	Lebanon and Sparta T. P. Co.	913 to 927			4	7	4	
Feb.	5,	1841	5	Lebanon and Sparta T. P. Co.	928 to 932				5		
May	18,	"	15	Columbia, Pulaski and Elkton T.P.Co	933 to 947			5	5	5	
"	19,	"	3	Fulton T. P. Co.	948 to 950				3		
"	19,	"	37	LaGrange and Memphis R. R. Co.	951 to 987, 1 for $1,500			7	26	4	
"	20,	"	97	Hiwassee R. R. Co.	988 to 1084			14	48	35	
June	3,	"	81	Columbia Central T. P. Co.	1085 to 1165			25	48	8	
July	19,	"	22	Gallatin T. P. Co.	1166 to 1187			5	13	4	
Aug.	20,	"	14	Columbia, Pulaski and Elkton T.P.Co	1188 to 1201			2	11	1	
"	27,	"	13	Nashville and Kentucky T. P. Co.	1202 to 1214			5	8		
Sept.	9,	"	27	Cumberland & Stones River T.P.Co.	1215 to 1241			1	26		
"	9,	"	8	Nolensville T. P. Co.	1242 to 1249			3	5		
"	9,	"	4	Columbia, Pulaski and Elkton T.P.Co	1250 to 1253			1	3		
Oct.	29,	"	4	Clarksville and Russelville T. P. Co.	1254 to 1257, 1 for $1,500			1	3		
Nov.	10,	"	10	Lebanon and Sparta T. P. Co.	1258 to 1267				10		
"	20,	"	27	Columbia, Pulaski and Elkton T.P.Co	1268 to 1294			5	15	6	
Dec.	21,	"	18	LaGrange and Memphis R. R. Co.	1295 to 1312			12		6	
"	30,	"	12	Cumberland & Stones River T.P.Co.	1313 to 1324				11	1	

May 14,1842	17	LaGrange and Memphis R. R. Co...	1325 to 1341	.....	.....	7	5	5	..	49
June 16, "	9	Cumberland & Stones River T.P Co.	1342 to 1350	.....	.....	2	3	4	..	
" 27, "	3	Fulton T. P. Co.....	1351 to 1353	.....	.....	.....	3	..	..	
Aug. 6, "	8	Columbia,Pulaski and Elkton T.P.Co	1354 to 1361	.....	.....	4	4	..	..	
Sept. 8, "	2	Gallatin T. P. Co.....	1362 to 1363	.....	.....	2	..	..	..	
" 9, "	26	Pelham and Jasper T. P. Co.....	1364 to 1389	.....	.....	11	11	4	..	
" 27, "	11	Nashville and Kentucky T. P. Co..	1390 to 1402	.....	.....	6	5	2	..	
Oct. 22, "	18	Cumberland & Stones River T.P.Co.	1403 to 1420	.....	.....	2	15	1	..	
Jan. 11,1843	8	Columbia,Pulaski and Elkton T.P.Co	1421 to 1428	.....	.....	3	5	..	..	
" 12 "	8	Nashville and Kentucky T. P. Co..	1429 to 1436	.....	.....	.....	7	1	..	
Feb. 27 "	11	Cumberland & Stones River T.P.Co.	1437 to 1447	.....	.....	4	7	..	..	
Mar. 7 "	24	Jefferson T. P. Co.....	1448 to 1471	1	.....	5	17	2	..	
July 23 "	11	Pelham and Jasper T. P. Co	1472 to 1482	.....	.....	3	7	1	..	
Aug. 5 "	10	Cumberland & Stones River T.P.Co.	1483 to 1492	.....	.....	7	3	..	..	
Sept. 19 "	4	Jefferson T. P. Co.....	1493 to 1496	.....	.....	1	3	..	..	
Nov. 1 "	5	Lebanon and Nashville T. P. Co....	1497 to 1501	.....	.....	1	3	1	..	
" 14,1844	13	Harpeth T. P. Co.....	1502 to 1514	6	.....	5	..	..	12	
Dec. 4 "	6	Jefferson T. P. Co	1515 to 1520	5	1	.....	..	..	..	
Jan. 30,1845	8	Murfreesboro & Manchester T.P.Co.	1521 to 1528	8	.....	.....	..	..	..	
June 5 "	3	Columbia,Pulaski and Elkton T.P.Co	1529 to 1531	3	.....	.....	..	..	..	50
Aug. 30 "	3	Nashville and Kentucky T.P.Co....	1532 to 1534	2	.....	.....	..	1	8	
Sept. 10 "	25	Murfreesboro & Manchester T.P.Co.	1535 to 1559	24	.....	.....	..	1	..	
Jan. 3,1846	13	" " "	1560 to 1572	13	.....	.....	..	..	..	
Feb. 18 "	6	Lebanon and Nashville T. P. Co....	1573 to 1578	6	.....	.....	..	..	..	
April 16 "	4	Franklin and Columbia T. P. Co....	1579 to 1582	1	.....	3	..	..	..	
July 3 "	2	Jefferson T. P. Co	1583 to 1584	2	.....	.....	..	..	..	
" 15 "	2	Columbia,Pulaski and Elkton T.P.Co	1585 to 1586. 1 for $1,600	1	.....	1	..	..	..	
Sept. 23 "	3	Murfreesboro & Manchester T.P.Co..	1587 to 1589. 1 for $1,900	3	.....	.....	..	..	..	
Feb. 8, 1847	10	Lebanon and Sparta T. P. Co.... ...	1590 to 1599. 1 for $1,800	5	1	1	..	3	..	
April 1,1847	79	Hiwassee R. R. Co.....	1600 to 1678	48	16	13	..	2	..	
Nov. 15 "	13	" "	1679 to 1691	11	.....	2	..	..	..	
Aug. 21,1849	27	East Tennessee & Georgia R.R.Co..	1692 to 1718	20	4	3	..	..	..	
Nov. 2 "	46	" " " " ..	1719 to 1764	35	4	4	..	3	..	
May 15,1850	21	" " " " ..	1765 to 1785	20	.....	.....	..	1	..	
Sept. 9 "	31	" " " " ..	1786 to 1816	22	6	3	..	..	..	
Dec. 21 "	33	" " " " ..	1817 to 1849	28	5	.....	..	..	..	
June 30 1851	18	" " " " ..	1850 to 1867	15	.....	3	..	..	..	51
Nov. 20 "	25	" " " " ..	1868 to 1892	12	.....	7	..	6	..	
.....	1	" " " " ..	1966	.....	1	.....	..	..	..	
	1803	.....	.....	290	38	670	666	210	19	

No 1786 was duplicated, making in all 1894 Bonds.

Mature July, 1890; No Letter Series, White Bonds; Issued under Act January 30, 1850; 6 per cent.

Sept. 1,1850	150	East Tennessee and Georgia R.R.Co	1 to 150	117	16	8	...	9	...
May 3,1851	100	" " " "	151 to 250	84	5	3	4	4	...
" 26, "	100	" " " "	251 to 350	17	2	...	...	1	...
.....	350	.....	.....	298	23	11	4	14	..

52

49 Under the act of November 23, 1865, 4,941 bonds were issued by the State, amounting to $4,941,000.00. These bonds are known and designated as white D bonds, and with them the State, under the terms of the act, took up or funded all past due coupons from the bonds of the State and coupons maturing January 1, 1866, and also any past due bond or bonds which might fall due during the year 1867. As a matter of fact, a comparatively small amount of *bonds* due and past due were funded under this
50 act. There are no data or records in this office from which it can be shown or ascertained what particular coupons went to make up any one of these bonds—in other words, the records do not show or enable you to trace from what bonds the funded coupons were taken. In explanation of the manner in which the funding under the act of November, 1865, was conducted, I herewith append, *as Exhibit "G,"* a correct copy of the record covering four funding transactions under this act of 1865, and the original,
51 of which this is a copy, is the only record known to me of these transactions. I herewith append, printed, Exhibit "H," which is a statement certified by me under date April 8, 1878; and I believe the same to be a correct statement at this time, showing amount of bonds issued by the State of Tennessee in aid of different railroad companies, and what disposition has been made of the indebtedness to the State in case of those several railroads. (See also Exhibits A, B, C, D, E and F, statements of ac-
52 counts, made parts hereof.)

The bonds of cities and railroads endorsed by the State outstanding on the 1st October, 1869, amounted to $2,196,000.00, and, as far as I can ascertain, the same amount was outstanding on the 20th January, 1870. The bonds issued for and as renewals were printed on the same plates as the bonds issued to railroads, and were of the consecutive numbers of

the then current series; nor was there anything in 53
the face of these bonds or upon them to distinguish them from the bonds issued to railroads. I herewith append statements account of the East Tennessee & Virginia Railroad, East Tennessee & Georgia Railroad, East Tennessee, Georgia & Virginia Railroad, Cincinnati, Cumberland Gap & Charleston Railroad, Knoxville & Kentucky Railroad, and of the Memphis & Charleston Railroad, and marked respectively Exhibits A, B, C, D, E and F, the same being correct statements, as shown by the books of 54
this office.

And further saith not.

JAS. L. GAINES.

Subscribed and sworn to before me, March 16th, 1880.

L. W. HUMES,
Special Examiner.

55

56

61

EXHIBIT A[1]

To Gaines Deposition

STATEMENT BOND ACCOUNT,

East Tennessee & Virginia Railroad Co., with the State of Tennessee.

1858.
Jan. 1. Settlement made by Legislative committee.
Dec. 2, 1868.
To 1602 State Bonds..... $1,602,000 00
1861.
Jan. 1. By 3 bonds cancelled by sinking fund..... 3,000 00
$1,599,000 00

62

FUNDED INTEREST.

Interest on $1,599,000.00 4 years to Jan. 1, 1866		$383,760 00
Coupons of endorsed bonds.....		34,590 00
Interest due July 1, 1861.....	$47,970 00	
By Cash paid.....	30,000 00	17,970 00
Interest due Jan. 1, 1862.....	47,970 00	
By Cash paid.....	5,000 00	42,970 00
		$479,290 00

1862.
May 26. By Cash..... $31,000 00
Interest on same 3 years 7 mos..... 6,665 00
June 30. By Cash..... 45,000 00
Interest 3½ years..... 9,450 00
63 Dec. 9. By Cash..... 87,170 00
Interest 3 years 7 mos..... 16,126 45
1863.
July 19. By Cash..... 30,000 00
Interest 2½ years..... 4,500 00
$129,911 46 $49,378 55
1866.
April 26. To 300 Bonds..... 300,000 00
$2,143,878 55
1866.
July 1. To interest on $2,148,378.55..... $64,451 35
1867.
Jan. 1. " " " " 64,451 35
Feb. 14. " 300 Bonds..... 300,000 00
July 1. " Interest on $2,448,378.55..... 73,451.35
64
1868.
Jan. 1. " " " " 73,451 35
July 1. " " " " 73,451 35
1869.
Jan. 1. " " " " 73,451 35
$422,708 10
By Cash..... 369,914 17
$52,793 93
1869.
March 25. Funded this day 22 coupons of your endorsed bonds..... 660 00
$2,449,038 55

STATEMENT INTEREST ACCOUNT. 65

East Tennessee and Virginia Railroad Co., with the State of Tennesee.

1869.	To interest, bal. as per settlement	$52,793 93	
July 1.	" " "	73,471 15	
1870.			
Jan. 1.	" " "	73,471 15	
July 1.	" " "	73,471 15	
" 28.	" Express charges on bonds	250 00	
" 29.	" " " " "	250 00	
	" Amount brot. forward (Bonds)	2,449,038 55	
			$2,722,745 93

66

1869.			
Jan 11.	By Payment	52,793 93	
July 11.	" "	71,308 10	
Sep. 22.	" "	2,143 85	
Dec. 31.	" "	110 15	
1870.			
Feb. 4.	" "	33,000 00	
July 29.	" "	500 00	
	" Amt. carried forward to consolidated acct.	25,628 70	
		$2,722,726 13	$2,722,745 93

67

68

61

EXHIBIT A[1]

To Gaines Deposition

STATEMENT BOND ACCOUNT,

East Tennessee & Virginia Railroad Co., with the State of Tennessee.

1858.
Jan. 1. Settlement made by Legislative committee.
Dec. 2, 1868.

To 1602 State Bonds		$1,602,000 00
1861.		
Jan. 1. By 3 bonds cancelled by sinking fund		3,000 00
		$1,599,000 00

62

FUNDED INTEREST.

Interest on $1,599,000.00 4 years to Jan. 1, 1866		$383,760 00
Coupons of endorsed bonds		34,590 00
Interest due July 1, 1861	$47,970 00	
By Cash paid	30,000 00	17,970 00
Interest due Jan. 1, 1862	47,970 00	
By Cash paid	5,000 00	42,970 00
		$479,290 00
1862.		
May 26. By Cash	$31,000 00	
Interest on same 3 years 7 mos	6,665 00	
June 30. By Cash	45,000 00	
Interest 3½ years	9,450 00	
63 Dec. 9. By Cash	87,170 00	
Interest 3 years 7 mos	16,126 45	
1863.		
July 19. By Cash	30,000 00	
Interest 2½ years	4,500 00	
	$129,911 46	$49,378 55
1866.		
April 26. To 300 Bonds		300,000 00
		$2,143,878 55
1866.		
July 1. To interest on $2,148,378.55	$64,451 35	
1867.		
Jan. 1. " " " "	64,451 35	
Feb. 14. " 300 Bonds		300,000 00
July 1. " Interest on $2,448,378.55	73,451.35	
64 1868.		
Jan. 1. " " " "	73,451 35	
July 1. " " " "	73,451 35	
1869.		
Jan. 1. " " " "	73,451 35	
	$422,708 10	
By Cash	369,914 17	
	$52,793 93	
1869.		
March 25. Funded this day 22 coupons of your endorsed bonds		660 00
		$2,449,038 55

STATEMENT INTEREST ACCOUNT. 65

East Tennessee and Virginia Railroad Co., with the State of Tennesee.

1869.	To interest, bal. as per settlement	$52,793 93	
July 1.	" " "	73,471 15	
1870.			
Jan. 1.	" " "	73,471 15	
July 1.	" " "	73,471 15	
" 28.	" Express charges on bonds	250 00	
" 29.	" " " " "	250 00	
	" Amount brot. forward (Bonds)	2,449,038 55	
			$2,722,745 93

66

1869.			
Jan 11.	By Payment	52,793 93	
July 11.	" "	71,308 10	
Sep. 22.	" "	2,143 95	
Dec. 31.	" "	110 15	
1870.			
Feb. 4.	" "	33,000 00	
July 29.	" "	500 00	
	" Amt. carried forward to consolidated acct.	25,628 70	
		$2,722,726 13	$2,722,745 9

67

68

69

EXHIBIT B[1]

To J. L. Gaines' Deposition.

STATEMENT BOND ACCOUNT
East Tennessee and Georgia Railroad Co.
With the State of Tennessee.

Settlement made by Legislative Committee,
Dec. 2, 1868.

1861				
70 Jan'y 1.	To 1,162 Bonds, ...			$1,162,000 00
Feb'y 5.	Cancelled by Sinking Fund, .		$ 2,000 00	
Nov. 2 and 20	" " " "		23,000 00	
1862				
June 4.	Bonds returned and cancelled,		100,000 00	125,000 00
				$1,037,000 00

FUNDED INTEREST.

71	$1,037,000.00 4 years' Interest,		$ 248,880 00
	Coupons on Endorsed Bonds funded, ...		6,420 00
			$ 255,300 00
1862			
July 1	By cash, ...	$ 62,220 00	
	Interest on $31,110.00 from July, 1862. to Jan'y, 1866,	6,533 01	
	Interest on $31,110.00 from 72 Jan'y, 1863, to Jan'y, 1866,	5,599 80	
	Balance in Sinking Fund acc't,	540 00	
	Interest on do., ...	129 60	75,022 50
			$ 180,277 50
	Balance of Bonds above, . .		1,037,000 00
			$1,217,277 50

1866.					
July	1	To Interest on $1,217,277.50,	$ 36,518 32		
Oct.	17	" 250 Bonds, ...		250,000 00	
1867					
Jan'y	1	" Interest on $1,467,277.50,	44,018 32		
July	1	" " " "	44,018 32		
1868					
Jan'y	1	" " " "	44,018 32		
July	1	" " " "	44,018 32		
1869.					
Jan'y	1	" " " "	44,018 32		
			$256,609 92		
		By cash to date, ...	216,432 20		
			$ 40,177 72	$1,467,277 50	

Statement Interest Account
East Tennessee and Georgia Railroad Co.
With the State of Tennessee.

1869.		To Interest Balance as per settlement, ...	$ 40,177 72		
July	1	" "	44,018 32		
1870.					
Jan'y	1	" "	44,018 32		
July	1	" "	44,018 32		
		Am't bro't forward Bonds,	1,467,277 50		
				$1,639,500 18	
1868.					
Dec.	28.	By Payment, ...	$ 40,177 72		
1869.					
July		" "	37,128 49		
Sept.	22	" "	6,889 83		
Oct.	13	" "	1,423 74		
		" am't carried forward to consolidated acc't,	1,553,890 40		
				$1,639,510 18	

77 EXHIBIT C[1].

To Jas. L. Gaines' Deposition.

STATEMENT ACCOUNT.

East Tennessee, Virginia and Georgia Railroad Co. (Consolidated) with the State of Tennessee.

	1870.		
	Aug. 1,	To Bal. from Acct. East Tennessee and Virginia Rail road Company, . .	$2,562,870 70
78		To Bal. from Acct. East Tennessee and Georgia Railroad Company, . . .	1,553,890 40
		To Error in computing Interest, . . .	1,000 00
			$4,117,761 10
	1870.		
79	Aug. 1,	By 3,835 State Bonds, .	$3,835,000 00
		" 9,425 Past due Coupons,	282,750 00
		" Cash, ...	11 10
			$4,117,761 10

80

EXHIBIT D[1]

81

To Jas. L. Gaines' Deposition.

STATEMENT BOND ACCOUNT.

MEMPHIS & CHARLESTON R. R. CO. WITH STATE OF TENNESSEE.

Settlement by Legislative Committee,
Dec. 2, 1868.

1856.				
Sept.	29,	To bonds loaned		$1,100,000 00
1862.				
Jan.	1,	Cancelled by Sinking Fund.....		21,000 00
				1,079,000 00

82

FUNDED INTEREST.

$1,079,000 4 years.....	$25,896 00	
Balance of interest due Jan., 1862	3,540 00	
	$162,500 00	

CREDITS.

1862.				
May	14,	By cash.....$32,430 00		
		3 years 8 mos. interest 7,134 60		
1863.				
April	10,	By cash..... 32,230 00		
		3 years 9 mos. interest 5,317 95		
			$77,112 55	
			$185,387 45	

83

		To bonds, above amount.....	$1,790,000 00	
1866.				
April	17,	" 200 bonds this day delivered	200,000 00	
		" Funded interest.....	185,387 45	
				$1,464,387 45
1866.				
July	1,	To interest on $1,464,387.45....	$43,931 62	
June	27,	" 100 bonds		100,000 00
1867.				
Jan'y	1,	" Interest on $1,564,387.45...	46,931 62	
July	1,	" " " " ...	46,931 62	
1868.				
Jan'y	1,	" " " " ...	46,931 62	
July	1,	" " " " ...	46,931 62	
1869.				
Jan'y	1,	" " " " ...	46,931 62	
			$278,589 72	
		By payments to 27th June, 1868, inclusive.....	236,329 50	
			$42,260 22	

84

85

1868.				
Oct.	20,	To bonds issued this day.....		300,000 00
1871.				
June	27,	By 33 bonds from Sinking Fund	$33,000 00	
		" Past due coupons on same..	2,790 00	
		" 12 bonds.....	12,000 00	
		" Past due coupons on same...	1,975 00	
		" Coupons.....	480 00	
1873.				
April	1,	By 44 bonds.....	44,000 00	
		" 176 coupons, past due, attach'd	5,280 00	
		" 776 " " detached	23,280 00	
		" Cash	570 00	

86

1874.				
Nov.	6,	" 69 bonds, July, 1874, coupons.	69,000 00	
		" 220 past due coupons.....	660 00	
		Cash.....	50	
1877.				
July	25,	" 1,309 bonds, July, 1877, and sub. coupons.... ..		
		" 21 bonds, Jan'y, '77, do..		
		" 318 bonds, Jan'y, '76, do..	1,648,000 00	
		1,648 total bonds.		

87

ATTACHED COUPONS.

1648	coupons, July 1, 1877	49,440 00	
339	" Jan. 1, "	10,170 00	
318	" July 1, 1875	9,540 00	
318	" Jan 1, 1876	9,540 00	
341	Detached coupons.....	10,230 00	
	To balance from interest account		64,900 00
	" amount overpaid.....		103 75
		$1,929,391 20	$1,929,391 20

88

STATEMENT INTEREST ACCOUNT 86

Memphis & Charleston Railroad Company with the State of Tennessee.

1869.			
Jan. 1,	To Interest Bal. as per settlement,	$42,250 22	
July 1,	To Interest,	55,931 62	
1870.			
	6 M's Interest,	677 94	
Jan. 1,	To Interest,	55,931 62	90
July 1,	" "	55,931 62	
1871.			
Jan. 1,	" "	55,931 62	
July 1,	" "	55,931 62	
1872.			
Jan. 1,	" "	55,931 62	
July 1,	" "	55,931 62	
1873.			
Jan. 1,	" "	54,424 27	
July 1,	" "	52,247 30	91
1874.			
Jan. 1,	" "	52,247 30	
July 1,	" "	50,157 48	
1875.			
Jan. 1,	" "	50,157 48	
July 1,	" "	50,157 50	
1876.			
Jan. 1,	" "	50,157 50	
Apr. 26,	" Error June 27, 1872 (credit to Miss. & Tenn.)	480 00	92
July 1,	" Interest,	50,157 50	
1877.			
Jan. 1,	" "	50,157 50	
July 1,	" "	50,157 50	
		$945,960 83	

93	1868.		
	Dec. 21,	By Payment Cash, . .	33,899 22
	1870.		
	May 26,	" " " .	28,804 78
		" 85 Bonds, . .	85,000 00
	1871.		
	Feb. 21,	" 504 Coupons @ $30 00,	15,120 00
		" 11 " " 25 00,	275 00
		" 132 " " 30 00,	3,960 00
		" 75 " " 30 00,	2,250 00
94		" 14 " " 25 00,	350 00
		" Cash, . .	470 00
		" Past due Bonds, . .	3,000 00
		" 400 Coupons @ $30 00,	12,000 00
		" 60 " " 25 00,	1,500 00
		" 20 " " 26 25,	525 00
	Mar. 24,	" 5 Bonds, . .	5,000 00
		" 28 Coupons @ $26 25,	735 00
		" 18 " " 25 00,	450 00
		" 562 " " 30 00,	16,860 00
95		" 53 " " 25 00,	1,325 00
		" Interest allowed on past due Bonds, . .	1,415 00
	May 20,	By 373 past due coupons @ $30,	11,190 00
		" 62 " " " " $25,	1,550 00
		" 1 " " Bond,	100 00
		" Interest on 2 bonds due Jan. 1, '64, and on 1 bond due Jan. 1, '65,	1,150 00
	June 29,	" 11 bonds and interest,	12,815 00
96		" 459 past due coupons @ $30,	13,770 00
		" 66 " " " " 25,	1,650 00
		" 6 bonds and interest,	6,260 00
		" 529 past due coupons @ $30,	15,870 00
		" 2 " " " " 25,	50 00
	July 24,	" 225 " " " " 30,	6,750 00
	Aug. 15,	" 225 " " " " 30,	6,750 00

1873.				97
Jan. 4,	By Cash - - -		1 60	
Feb. 10,	" past due coupons, - -		31,930 00	
	" 21 Bonds, - -		21,000 00	
Aug. 30,	" 25 " - - -		25,000 00	
	" 781 coupons, @ $30, -		23,430 00	
	" 100 " " 25, -		2,500 00	
	" 44 " " 30, -		1,320 00	
1874.				
M'ch 20,	" Coupons, - -		52,010 00	
April 15,	" " - - -		240 00	98
Aug. 18,	" " - - -		4,050 00	
	" 6 New Series F'd'ng bonds,		6,000 00	
Sept. 30,	" 20 Registered bonds, - -		20,000 00	
Nov. 6,	" 1,672 coupons @ $30, - -		50,160 00	
Dec. 9,	" 73 bonds, - - -		73,000 00	
24,	" 25 past due coupons, - -		750 00	
1875.				
Jan. 14,	" Cash, - - -		50,157 48	
1876.				
June 15,	" Coupons, - -		14,550 00	99
July 11,	" " (July 1875,) - -		6,450 00	
Sept. 7,	" " " " - -		8,070 00	
1876.				
April 26,	" " (Jan'y, 1876,) -		315 00	
June 15,	" " " " -		17,400 00	
July 11,	" " " " -		6,450 00	
Sept. 7,	" " " " -		8,970 00	
12,	" Cash, - - -		21,087 50	
Nov. 18,	" Coupons (Jany, 1876), -		10,710 00	
Dec. 15,	" " " " -		4,050 00	100
19,	" " " " -		1,800 00	
1876.				
M'ch 14,	" 100 coupons (July, 1876), -		3,000 00	
April 26,	" " " " -		685 00	
June 15,	" " " " -		14,370 00	
July 11,	" " " " -		7,110 00	
Sept. 7,	" " " " -		8,880 00	

101	Nov. 18,	By 100 coupons (July, 1876), -	10,710 00
	Dec. 15,	" " " " -	4,140 00
	19,	" " " " -	1,800 00
	1876.		
	Dec. 15,	" " (Jany, 1877), -	33,540 00
	19,	" " " " -	1,800 00
		" Balance to bond account, -	64,900 00
	1871.		
	Sept. 19,	" 1,335 coupons @ $30, - -	40,050 00
		" 18 " " 25, - -	450 00
102		" Error in calculations, -	1,480 25
			$945,960 83

EXHIBIT E[1]

To Jas. L. Gaines's Deposition.

STATEMENT BOND ACCOUNT, KNOXVILLE AND KENTUCKY RAILROAD CO. WITH THE STATE OF TENNESSEE.

103	1866,	Old Loans			$180,000 00
	Jany. 1,	Interest Funded . . .			43,200 00
	April 27,	250 Bonds, interest	July,	1876	250,000 00
	July 23,	250 " "	"		250,000 00
	1867.				
	Jany. 3,	120 " "	July,	1877	20,000 00
	"	110 " "	"		110,000 00
	Feb. 14,	100 " "	"		100,000 00
	Mar. 2,	100 " "	"		100,000 00
104	April 1,	300 " "	"		300,000 00
	Oct. 8,	110 " "	July,	1868	110,000 00
	1868.				
	Jany. 8,	150 " "	"		150,000 00
	" 24,	350 " "	"		350,000 00
	Feb. 24,	300 " "	"		300,000 00
	1869.				
	Mar. 6,	130 " "	Jan'y,	1869	130,000 00
					$2,393,200 00

STATEMENT INTEREST ACCOUNT—KNOXVILLE AND KENTUCKY RAILROAD CO. WITH THE STATE OF TENNESSEE. 105

1866.		
July 1, to interest		$14,196 00
1867.		
Jan'y 1, "		21,686 00
July 1, "		40,596 00
1868.		
Jan'y 1, "		43,896 00 106
		$120,384 00

1866.	PAYMENTS.	
June, By payment		14,196 00
Dec. " "		21,696 00
1867.		
Oct. 12, " "		40,596 00
1868.		
Jan. 3, " "		20,000 00 107
Feb. 18, By "		20,000 00
" 19, " "		3,896 00
		$120,384 00

July 1, To interest		67,896 00
1869.		
Jan'y 1, " "		67,896 00
July 1, " "		71,796 00 108
1870.		
Jan'y 1, " "		71,796 00
July 1, " "		71,796 00
		$351,180 00

109 W. B. JOHNSON AND C. M. MCGHEE, *et al.*, Purchasers of the Knoxville & Kentucky Rail Road, in account with the State of Tennessee.

	1871.		
	Oct. 1,	To Purchase Knoxville & Kentucy R. R.	$350,000 00
	1871.	PAYMENTS.	
	Oct. 16,	By State Bonds	$80,000 00
	" "	Coupons	75,000 00
110	1872.		
	Oct. "	98 State Bonds . . .	98,000 00
	" "	72 " . . .	72,000 00
	1873.		
	Apl. 12, "	12 " . . .	12,000 00
	May 9, "	20 " . . .	20,000 00
	May 24, "	9 " . . .	18,000 00
	" 28, "	18 " . . .	9,000 00
	June 3, "	22 " . . .	22,000 00
	1874.		
111	May 4, "	1 " Jan. 1871 coupon	1,000 00
	" 22, "	3 " July, 1874 "	2,479 33
	Sept. 4, "	8 " Jan. 1871 "	8,000 00
	" 24, "	Cash	20 67
			$350,000 00

112

EXHIBIT "F" 113

To Jas. L. Gaines' Deposition.

STATEMENT BOND ACCOUNT CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD CO., WITH THE STATE OF TENNESSEE.

1866.			
	Old Loans, ...		$132,000 00
Jan'y 1,	Interest funded, . .		31,680 00
July 19,	100 Bonds, ...		100,000 00
Aug. 22,	122 "		122,000 00
Dec. 12,	100 "		100,000 00
1867.			
Feb. 21,	167 "		167,000 00
Sept. 25,	333 "		333,000 00
1868.			
Jan. 31,	100 " Interest from Jan. 1868,		100,000 00
" "	100 " " " "		100,000 00
May 1,	219 " " " "		219,000 00
			$1,404,680 00

114

115

STATEMENT INTEREST ACCOUNT CINCINNATI, CUMBERLAND GAP AND CHARLESTON RAILROAD CO., WITH THE STATE OF TENNESSEE.

1866.			
July 1,	By Interest, . .	$4,910 40	
1867.			
Jan'y 1,	" " . .	14,510 40	
July 1,	" " . .	29,570 40	
1868.			
Jan'y 1,	" " . .	29,570 40	
July 1,	" " . .	35,570 40	
	" " . .	6,570 00	
1869.			
Jan'y 1,	" " . .	42,140 40	
July 1,	" " . .	42,140 40	
1870.			
Jan'y 1,	" " . .	42,140 40	
July 1,	" " . .	42,140 40	
			$289,323 60

116

117	1867.			
	Jan'y 14,	By Payment, . .	$19,480 80	
	June 28,	" " . .	25,170 00	
	" 28,	" " . .	2,670 00	
	1868.			
	Feb'y 14,	" " . .	31,614 68	
	1871.			
	Feb'y 20,	" " . .	435 82	
				79,371 30
118				$209,952 30

R. T. Wilson and C. M. McGhee, Purchasers of the Cincinnati, Cumberland Gap and Charleston Railroad, in Account with the State of Tennessee.

	1871.		
	Oct'r 16,	To purchase Cincinnati, Cumberland Gap and Charleston	
119		Railroad, ...	$300,000 00

Payments.

	1871.		
	Oct'r 16,	By State Bonds, .	$75,000 00
	1872.		
	Oct'r 16,	" 75 State Bonds,	75,000 00
	1873.		
	Feb'y 3,	" 159 " "	150,000 00
			$300,000 00
120			

EXHIBIT G

To James L. Gaines' Deposition.

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., June 23, 1866.

A. Richardson, New York, has this day deposited in my office eight hundred past due coupons of the State of Tennesee, for thirty dollars each, and for dollars each, and amounting twenty-four thousand dollars, for which he is entitled to six per cent coupon bonds of the State, under the Act passed November 23d, 1865.

S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE, }
Executive Department. }

$24,000.

No. 2,294 to No. 2,317.

Received of W. G. Brownlow, Governor of the State of Tennessee, twenty-four of the six per cent. coupon bonds of the State, for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1892, and numbered from 2,294 to 2,317, inclusive. First coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the State, which are filed with Comptroller of the Treasury.

Given under my hand this 23d day of June, 1866.

A. RICHARDSON.

COMPTROLLER'S OFFICE,
NASHVILLE, Tenn., August 16, 1866.

Adams Express Co. has this day deposited in my office one thousand seven hundred and forty-five past due coupons of the State of Tennessee, for

thirty dollars each, and sixty-six for twenty-five dollars each, and

1,745 coupons	@ $30	$52,350
66 "	" 25	1,650
		$54,000

amounting to fifty four thousand dollars, for which he is entitled to six per cent. coupon bonds of the State under the Act passed November 23d, 1865.

S. W. HATCHETT,
Comptroller.

STATE OF TENNESSEE,
Executive Department.

$54,000.

No. 3,878 to No. 3,931.

Received of W. G. Brownlow, Governor of the State Tennessee, fifty-four (54) of the six per cent. coupon bonds of the State, for one thousand dollars each, dated the 1st day of February, 1866, payable January 1st, 1892, and numbered from 3,878 to 3,931, inclusive. First Coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the bonds of the State, which are filed with the Comptroller of the Treasury.

Given under my hand this 18th day of September, 1868.

AD. EX. CO.,
J. A. MCARTHUR, *Agent.*

COMPTROLLER'S OFFICE,
Nashville, Tenn., March 21st, 1867.

The People's Bank of Nashville has this day deposited in my office three hundred and thirty past-due coupons of the State of Tennessee, for thirty dollars each, and four for twenty-five dollars each;

330 coupons @ $30.00, . . $9,900 00 129
4 " @ $25.00, . . 100 00

$10,000 00

amounting ten thousand dollars for which he is entitled to six per cent. coupon bonds of the State, under the Act passed November 23d, 1865.

Comptroller.

STATE OF TENNESSEE, 130
Executive Department.

$10,000.

No. 4,542 to No. 4,551.

Received of W. G. Brownlow, Governor of the State of Tennessee, ten of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1892, and numbered from 4,542 to 4,551 inclusive; first coupon due 1st July, 1866. Said 131
bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the State, which are filed with Comptroller of Treasury.

Given under my hand this 21st day of March, 1867.

PEOPLE'S BANK,
GEORGE HOLBROOK, Clk., *Agent.*

COMPTROLLER'S OFFICE, 132
Nashville, Tenn., July 21st, 1870.

The First National Bank of Nashville has this day deposited in my office thirty-two past due coupons of the State of Tennessee for thirty dollars each, and two past due coupons for twenty-five dollars each; and one certificate of indebtedness of G. W. Blackburn, Compt.,

for $2.08; amounting one thousand and twelve $\frac{08}{100}$ dollars, for which he is entitled to six per cent. coupon bonds of the State, under the Act passed November 23d, 1865.

ED. R. PENNEBAKER,
Comptroller.

STATE OF TENNESSEE,
Executive Department.

$1,000.

No. 4,920 to No. ....

Received D. W. C. Senter, Governor of the State of Tennessee, one of the six per cent. coupon bonds of the State for one thousand dollars each, dated the 1st day of January, 1866, payable January 1st, 1892, and numbered from 4,920 to —— inclusive; first coupons due 1st July, 1866. Said bonds are issued under the Act of November 23d, 1865, in lieu of that amount of past due coupons of the State, which are filed with the Comptroller of the Treasury.

Given under my hand this 10th day of August, 1870.

T. COOLEY, for Agent,
Cash. 1 Nat. Bk.

EXHIBIT H, 137

To Jas. L. Gaines' Deposition.

Statement showing amount of bonds issued by the State of Tennessee, in aid of different Railroad Companies, and what disposition has been made of the indebtedness to the State in case of the several Railroads.

SOLD BY COMMISSIONERS :

Edgefield & Kentucky R. R.

Bonds issued (including $200,000 to E. H. N.)	$1,580,000 00		138
Interest funded, January 1, 1866,	231,812 00		
Interest unpaid, July 1, 1870,	365,220 00		
U. S. claims assumed,	130,804 58	$2,107,836 58	
Sold August 26, 1861, for		900,000 00	

Cin'ti, Cumb. Gap & Charleston R. R.

Bonds issued,	153,000 00		
Interest unpaid,	142,068 12	1,615,061 12	
Sold October 16, 1871, for		500,000 00	

Knoxville & Kentucky R. R.

Bonds issued,	2,320,000,00		
Interest unpaid,	394,380 00	724,380 00	139
Sold October 10, 1871, for		350,000 00	

McMinnville & Manchester R. R.

Bonds issued,	772,000 00		
Interest unpaid,	294,057 00	1,066,057 00	
Sold August 15, 1871, for		300,000 00	

Nashville & Northwestern R. R.

Bonds issued,	5,222,000 00		
Interest funded, January, 1866,	396,475 00	5,618,475 00	
Balance interest unpaid, July, 1870,		217,725 00	
Sold, October, 1871, for	2,400,000 00		

Rogersville & Jefferson R. R. 140

Bonds issued,	385,000 00		
Interest funded, January, 1866,	38,160 00	423,160 00	
Interest unpaid, July, 1870,		46,156 00	
Sold, March, 1872, for	25,000 00		

Winchester & Alabama R. R.

Bonds issued,	1,289,000 00		
Interest funded, January, 1866,	143,353 00	1,432,353 00	
Interest unpaid, July, 1870,		5,153 04	
Sold, September, 1871,	300,000 00		

141 *Knoxville & Charleston R. R.*

Bonds issued,..... [illegible]
Interest unpaid,..... [illegible]
Sold, March 22, 1872, for..... [illegible]

East Tenn. & Western N. Car. R. R.

Bonds issued,..... 400,000 00
Interest unpaid,..... 30,000 00
Sold, November, 1871, for..... 30,000 00

Memphis, Clarksville & Louisv. R. R.

Bonds issued,..... 1,582,000 00
Interest funded, January, 1866,..... 312,600 00 1,894,600 00
142 Interest unpaid 413,986 00
U. S. claims assumed,..... 380,756 00
Sold, September 28, 1871, for..... 1,700,000 00

Tennessee & Pacific R. R.

Bonds issued,..... 115,500 00
Interest unpaid, July, 1872, for..... 71,080 00
Sold, August 8, 1872,..... 300,000 00

P. S.—Total bonds issued to Railroads,..... 2,925,200 00
Of these bonds there have been cancelled about,..... 15,800,000 00
Leaving of the original issuance out-
143 standing about, ... 14,250,000 00

ROADS WHICH HAVE LIQUIDATED THEIR INDEBTEDNESS.

East Tennessee & Virginia R. R.

Bonds issued,..... 2,202,000 00
Interest funded, 1866,..... 250,038 55

2,452,038 55
Less sinking fund paid,..... 3,000 00 2,449,038 55

East Tennessee & Georgia R. R.

Bonds issued,..... 1,614,000 00
144 Interest funded, January, 1866,..... 180,277 50

1,794,277 50
Less amount sinking fund paid,..... 125,000 00 1,669,277 50
Total indebtedness of the two above roads, paid August 1, 1870, by East Tennessee, Va. & Ga. R.R. Co. (consolidated),.. 4,118,316 05

Central Southern R. R.

Bonds issued,..... 566,000 00
Interest funded, January, 1866,..... 128,610 00 724,160 00

Tennessee & Alabama R. R.			146
Bonds issued,	[illegible]		
Interest funded, January, 1866,	[illegible]	[illegible]	
Nashville and Decatur R. R.			
Bonds issued,		[illegible]	
Total paid by the Nashville and Decatur R. R. Co., March, 1871,		[illegible]	
Memphis and Charleston R. R.			
Bonds issued,	[illegible]		
Interest funded, January, 1866,	[illegible]	[illegible]	
Less amount paid on sinking fund,		[illegible]	
			146
Balance paid, July 25, 1877,		[illegible]	
Memphis and Ohio R. R.			
Bonds issued,	[illegible]		
Interest funded, January, 1866,	[illegible]		
Paid, May 25, 1871,	[illegible]		
Mississippi and Tennessee R. R.			
Bonds issued,	[illegible]		
Interest funded, January, 1866,	[illegible]	[illegible]	
Less amount paid on sinking fund,		[illegible]	
			147
Balance paid, January 16, 1878,		[illegible]	
Mobile and Ohio R. R.			
Bonds issued,	[illegible]		
Interest funded January, 1866,	[illegible]		
Paid, January, 1866,	[illegible]		
Mississippi Central and Tennessee R. R.			
Bonds issued,	1,124,000 00		
Interest funded January, 1866,	75,180 00		
Paid December 1, 1877,	1,199,180 00		148
Nashville and Chattanooga R. R.			
Bonds issued,	395,000 00		
By sinking fund paid,	30,835 00		
Balance paid January 1, 1874,	364,165 00		

149 RECAPITULATION.

Defaulting railroads sold by the State Commissioners:

Bonds issued,	14,628,000 00	
Interest funded January, 1866,	1,122,306 00	
Interest paid July, 1870,	3,331,163 12	
U. S. Government claims assumed,	371,560 00	
		10,593,029 12
Amount realized by sale of the above roads (sales bearing date July, 1870),		6,698,000 00

Roads which have settled their indebtedness:

150

Bonds issued,	12,742,000 00	
Interest funded January, 1866,	1,850,768 00	
Sinking fund paid,	493,306 00	
Unaccounted for,	1,255,700 00	

STATE OF TENNESSEE,
Comptroller's Office.

I, JAS. L. GAINES, Comptroller of the Treasury of the State of Tennessee, do hereby certify that the foregoing is a correct statement, as shown by the records and books in this office.

151

Witness my official seal and signature at Nashville, this 8th day of April, 1878.

[L. S.]

JAMES L. GAINES,
Comptroller.

152

Deposition of G. W. Seay.

1

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the
RAILROAD COMPANY,

versus

THE
RAILROAD COMPANY.

2

Deposition of G. W. SEAY, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee. 3

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for defendants.*

G. W. SEAY, being first duly sworn, deposed as follows: 4

My name is George Whorton Seay; I was fifty-two (52) years old my last birth day; I have lived in and near Nashville since May, 1866—from boy-

hood; I lived in Nashville with but one or two short intervals up to October, 1858, at which time I moved to Columbia, Tennessee; from January, 1854, as I now recollect, up to October, 1858, I was general bookkeeper of the Bank of Tennessee, at Nashville, succeeding H. L. Claiborne in 1854, and succeeded by him in October, 1858; during that period the Bank of Tennessee was the sole fiscal agent of the State of Tennessee, and all the funds of the State were or ought to have been deposited in said Bank. If the State officials had any safe or other means to keep their money secure; it was, I presume, merely a temporary place preparatory to making regular deposits in the bank; if a tax collector had money deposited in a branch bank, I suppose he would have deposited it in such branch bank temporarily at his own credit, awaiting the time when he would pay it over to the State Treasurer, accompanied by a receiving warrant from the Comptroller, but of this I have no knowledge as payments were made to the Treasurer on a receiving warrant from the Comptroller, the treasurer taking up the Comptroller's paying warrant and issuing therefor to the parties presenting same, his checks on the Bank of Tennessee; I have examined some (possibly all) the accounts kept with the railroad companies of the State which had received the State bonds; I find that I adopted a different plan, but with the same view as my predecessor. He kept his receipts from railroads as "Railroad Companies for Interest on State Bonds," and I kept the accounts with the different railroads separately. My reason for this change was on account of the frequent partial payments made by those companies, and the difficulty in stating the unpaid balances due from those companies if the account had been kept up as it had been commenced by my predecessor under the heading of "Railroad

Companies for Interest," &c. The moneys thus 9
paid, whether to credit of the account headed "Rail-
road Companies for Interest," &c., or to credit of
separate railroads, as kept by myself, was merely
kept temporarily so until the amounts due by each
railroad had been fully provided, and then passed
to credit of the Treasurer of Tennessee. The keep-
ing of the accounts by myself separately for the
different railroads was not provided for the pay-
ment of any specific bonds, but for the payment of
so much interest due the State by the railroad com- 10
panies. The Bank of Tennessee did not keep any
account of the separate and particular bonds issued
any railroad company, and as an officer of the bank
I did not know and was never furnished with any
list of such loans made by the State to the railroad
companies, but simply furnished with a list of the
several amounts of interest due the State by the
companies who had received the loan of bonds from
the State. The bank acted in no other way towards
such railroad companies than as the depositary of 11
such companies for credit of the Treasurer of the
State in the manner before stated. As fiscal agent
of the State the Bank of Tennessee paid, or caused
to be paid by its correspondent in New York, all
the coupons from the State bonds, for whatever
purpose issued, and never charged the payment of
a single coupon to any railroad whatever. The in-
terest so paid was charged to the Treasurer of the
State directly by the Bank of Tennessee.

And further saith not. 12

G. W. SEAY.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

hood; I lived in Nashville with but one or two short intervals up to October, 1858, at which time I moved to Columbia, Tennessee; from January, 1854, as I now recollect, up to October, 1858, I was general bookkeeper of the Bank of Tennessee, at Nashville, succeeding H. L. Claiborne in 1854, and succeeded by him in October, 1858; during that period the Bank of Tennessee was the sole fiscal agent of the State of Tennessee, and all the funds of the State were or ought to have been deposited in said Bank. If the State officials had any safe or other means to keep their money secure; it was, I presume, merely a temporary place preparatory to making regular deposits in the bank; if a tax collector had money deposited in a branch bank, I suppose he would have deposited it in such branch bank temporarily at his own credit, awaiting the time when he would pay it over to the State Treasurer, accompanied by a receiving warrant from the Comptroller, but of this I have no knowledge as payments were made to the Treasurer on a receiving warrant from the Comptroller, the treasurer taking up the Comptroller's paying warrant and issuing therefor to the parties presenting same, his checks on the Bank of Tennessee; I have examined some (possibly all) the accounts kept with the railroad companies of the State which had received the State bonds; I find that I adopted a different plan, but with the same view as my predecessor. He kept his receipts from railroads as "Railroad Companies for Interest on State Bonds," and I kept the accounts with the different railroads separately. My reason for this change was on account of the frequent partial payments made by those companies, and the difficulty in stating the unpaid balances due from those companies if the account had been kept up as it had been commenced by my predecessor under the heading of "Railroad

Companies for Interest," &c. The moneys thus 9
paid, whether to credit of the account headed "Rail-
road Companies for Interest," &c., or to credit of
separate railroads, as kept by myself, was merely
kept temporarily so until the amounts due by each
railroad had been fully provided, and then passed
to credit of the Treasurer of Tennessee. The keep-
ing of the accounts by myself separately for the
different railroads was not provided for the pay-
ment of any specific bonds, but for the payment of
so much interest due the State by the railroad com- 10
panies. The Bank of Tennessee did not keep any
account of the separate and particular bonds issued
any railroad company, and as an officer of the bank
I did not know and was never furnished with any
list of such loans made by the State to the railroad
companies, but simply furnished with a list of the
several amounts of interest due the State by the
companies who had received the loan of bonds from
the State. The bank acted in no other way towards
such railroad companies than as the depositary of 11
such companies for credit of the Treasurer of the
State in the manner before stated. As fiscal agent
of the State the Bank of Tennessee paid, or caused
to be paid by its correspondent in New York, all
the coupons from the State bonds, for whatever
purpose issued, and never charged the payment of
a single coupon to any railroad whatever. The in-
terest so paid was charged to the Treasurer of the
State directly by the Bank of Tennessee.

And further saith not. 12

G. W. SEAY.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

Deposition of Wm. Morrow.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the
RAILROAD COMPANY,

versus

THE
RAILROAD COMPANY *et al.*

Deposition of WM. MORROW, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit—Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for Defendants.*

WM. MORROW, being first duly sworn, deposed as follows:

1 Q. State your name, age and place of residence? How long and during what period of time

5 were you the Treasurer of the State of Tennessee? A witness in this case, John T. Terry of the firm of E. D. Morgan & Co., of New York City, in answer to interrogatory 29th on the 8th page of his printed deposition asking him: "When his firm of E. D. Morgan & Co. and himself became the owners of Tennessee bonds, was he not aware that they were liens upon railroads in this State?" says: "We "were so informed by the Treasurer of the State "of Tennessee in our office"; and in answer to the
6 39th cross-interrogatory on page 10, asking him, "who was the Tennessee treasurer with whom you "(he) had the conversation in his office, and when "was it?" Answered: "My impression is his "name was Morrow, and he had some Tennessee "bonds for sale; this was previous to 1873, to "the best of my recollection; it was since the war." Now please state whether you had the conversation with John T. Terry he has related, or told him the State bonds issued to railroads were first mortgage
7 liens upon the railroads in this State? Did you have any Tennessee bonds for sale in 1873, or prior or subsequent to that date, or ever inform Terry so? Were you ever in the office of E. D. Morgan & Co., of New York? if yea, at what date were you in their office? Were you ever in their office or have a conversation with any member of that firm before that date? Were you in New York City in 1873; at all?

A. Name, William Morrow; age, forty-one, resi-
8 dence, Nashville, Tennessee; I was State Treasurer of Tennessee from June, 1st, 1870, up to February 5th, 1877; it was during the month of November or December 1874, in December I think that I first met Gov. E. D. Morgan of firm of Morgan & Co., and the place I think was in the Fourth National Bank of New York; I state that according to the best of my recollection; I never met Mr.

Terry, and was not at the banking house of E. D. 9
Morgan & Co.; that I never told him State bonds were a lien, but I state without doubt I never informed him I had Tennessee bonds for sale, for the reason I never bought or sold directly or indirectly any Tennessee bonds, save a few bought as my part of the purchase money of the Knoxville & Charleston Rail Road, and paid to the State of Tennessee; there must be some confusion of persons and dates in the mind of Mr. Terry; at the time above referred to, the comptroller and myself were in New York, 10
and the former was negotiating loan (which failed) to pay the January, 1875, interest on State debt; then it was I first met Governor Morgan and was in banking house of Drexel, Morgan & Co., but certainly no such statements were made by me to Mr. Terry or to anyone else as he imputes to me in his deposition; I might have been in New York in 1873, but my acquaintance with the banking firm of E. D. Morgan & Co. and Drexel, Morgan & Co. does not antedate November or December, 1874. 11

2 Q. Please state the reputation and character of Robert J. McKinney, Archibald Wright, and Francis B. Fogg, the commissioners appointed by the Legislature of Tennessee to conduct the proceedings on behalf of the State against delinquent and insolvent railroad companies, if you are acquainted with their characters for integrity and intelligence. State also their ages, circumstances, and independency of and want of connection with railroads.

A. I have known personally the three gentlemen 12
named in above interrogatory for years, and I am at a loss for words to express the high esteem in which they have been for years and still are deservedly held by the entire people of Tennessee, and of their entire fitness to conduct properly the work assigned them of protecting and disposing of the State's interest in railroads; they are or were all

beyond the age of sixty-five; ages not exactly known to me; of the highest integrity and intelligence; two had prior to the war occupied places on the Supreme Bench with distinguished credit, and the other for years the leading lawyer of Middle Tennessee; all in independent circumstances financially, and regarded this important trust committed to them as perhaps the closing public service of their lives; it was in my opinion discharged with singular fidelity and wisdom; and further saith not.

WILLIAM MORROW.

Subscribed and sworn to before me, March 11, 1880.

L. W. HUMES,
Special Examiner.

Deposition of S. R. Cruse.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the
Railroad Company,

versus

THE
RAILROAD COMPANY *et al.*

Deposition of S. R. CRUSE, witness for defendants, taken in Memphis, Tennessee, March 20th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, taken pursuant to agreement.

Present, W. Y. C. HUMES, for defendants.

S. R. CRUSE, being first duly sworn, deposed as follows:

My name is S. R. Cruse; age, years; I live in Memphis, Tennessee; I am Secretary and Treasurer of the Memphis & Charleston Railroad Company, and have been about years; I personally know that the Memphis & Charleston Railroad Company

has been in the exclusive and actual adverse possession of the entire track and road-bed of said railroad, from the City of Memphis to the western boundary of the State of Mississippi, and of the branch from Moscow to Somerville, and of the depots and depot grounds of said railroad in Tennessee, from Memphis to the Mississippi line, and of all the property of, belonging to and appurtenant to said railroad in the State of Tennessee, and has been holding the same and every part thereof adversely to any and all claims of the holders of the bonds of the State of Tennessee for more than seven years continuously immediately before the 1st day of January, 1879, under deeds in fee-simple as to the realty and judgments of condemnation as to the right of way.

And further saith not.

S. R. CRUSE.

Subscribed and sworn to before me, this March 20th, 1880.

L. W. HUMES,
Special Examiner.

Deposition of S. R. Cruse.

UNITED STATES CIRCUIT COURT.

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
On behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company,

VERSUS

THE MEMPHIS & CHARLESTON RAILROAD COMPANY ET AL.

Deposition of S. R. CRUSE, witness for defendants, taken in Memphis, Tenn., April 22d, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, for Defendants.

S. R. CRUSE being first duly sworn, deposed as follows:

My name is S. R. CRUSE; I live in Memphis, Tenn.; I am now, and have been Secretary and Treasurer of the Memphis & Charleston Railroad Company for about 15 years, holding office here and at Huntsville, Ala., during that time.

Q. 2. Do you know anything about Major M. J. Wicks subsidizing the Memphis Appeal to depreciate the credit of the State of Tennessee? If yea, please state all you know about it, and if the Board of

Directors found it out, and if so, please state what action they took in the matter.

Ans. M. J. Wicks, President of the Memphis & Charleston Railroad Company, did pay to the "Memphis Appeal" the sum of seven thousand five hundred dollars for services rendered by said Appeal, "for (as stated in their receipt given by the editors) depreciating the credit of the State of Tennessee." This action of President Wicks was not authorized by the Board of Directors or any member thereof. It was brought to the notice of the Directors by John M. Carmack, a member of the Board, and was by the Board utterly repudiated. It was one of the causes of President Wicks' forced resignation.

Messrs. Humes & Poston, Attorneys, were instructed by the Board of Directors to bring suit against the said M. J. Wicks to recover the money so unlawfully paid by him to the Memphis Appeal for the purpose above stated, and did bring suit against said Wicks in the form of a cross action, Wicks claiming payment of said Co. of a note of $5,000 which he held, and which said Co. refused to pay in consequence of payment to said Appeal as aforesaid.

During the presidency of said M. J. Wicks, which embraced the period between 1868 and 1873, the Memphis & Charleston Railroad Company did not, so far as I know, purchase any Tennessee bonds for payment to the State Treasurer on its debt to State of Tennessee.

Q. 3. How was the interest paid to the State, and how was the account of the interest kept on the bonds of the State loaned to the companies?

A. The interest was charged up semi-annually, and was paid in cash, past due coupons of State

bonds, and State bonds without reference to the purpose for which the bonds and coupons were issued. I mean to say that the payment was made in any obligations receivable at the State Treasury, and that there was no restriction as to the character of bonds or coupons so paid in.

It was paid as so much interest on a debt due to the State of Tenn. for a loan made to the Memphis & Charleston Railroad Company by said State. And no attempt was ever made or considered necessary to get up the coupons from the particular bonds which might have been loaned the Co.

And further saith not.

S. R. CRUSE.

Subscribed and sworn to before me, this April 22, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. Humes, Special Examiner, duly appointed by the United States Circuit Court—Western District of Tennessee, to take the testimony on behalf of the defendants, in the above entitled suit in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption and reduced to writing and subscribed to by the witness in my presence. Witness my hand, this April 22d, 1880.

L. W. HUMES,
Special Examiner.

Deposition of Jas. D. Porter.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on Behalf of the Holders of Internal Improvement Bonds of Tennessee, Issued to the
RAILROAD COMPANY

vs.

THE
RAILROAD COMPANY *et al.*

Deposition of JAS. D. PORTER, witness for defendants, taken in Paris, Tennessee, March 9th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. HUMES, *for Defendants.*

JAS. D. PORTER, being first duly sworn, deposed as follows:

I am a resident of Paris, Tennessee, and have been all of my life; I am 50 years old; I was Governor of the State of Tennessee twice, covering the years 1875-6-7 and '8.

5 The leading thought of my administration was an adjustment of the State debt.

After the State defaulted in the payment of the interest, I saw that it was impossible to pay the interest out of the revenues of the State according to the assessment existing at that time; about this time I received this communication (which I make Exhibit "A" to this my deposition), and I communicated it to the legislature in my biennial message of January, 1877; the legislature did send the com-
6 mission to New York in answer to my recommendation, and they met a committee of arbiters appointed at a meeting held at the clearing house in 1877, a meeting held and controlled by the bondholders of Southern State bonds and held in the interest of these bondholders; after a discussion between this committee of arbiters and this Tennessee commission, the Court of Arbitration recommended a settlement of the debt of the State of Tennessee by the issuance of new bonds at the rate of 60% of the total
7 amount; these New York arbiters in their communication to me stated that this settlement would be just to the bondholders and honorable to the State; the legislature adjourned for the want of time without considering their recommendation; in the autumn following, I put myself in communication with some of the leading bondholders to know if they would accept the recommendation of that arbitration; they were generally favorable to it; I therefore called the legislature together in extra
8 session the 5th of December, 1877, and submitted a message of that date to them in which I warmly urged that settlement; I submit the message and the accompanying documents as a part of this my deposition, and as Exhibit B. hereto; the originals of the letters in my message, Exhibit B hereto, I do not know where they are, they are not in my possession, but I do know they are true and accu-

rate copies, as I compared the proof with the original before I sent the message to the legislature; I am satisfied I sent the original letters to the printer with the manuscript of the message; I did this because I did not consider them matters to be preserved after I had them printed in the message. 9

After the legislature had spent some days in wrangling, they were about to adjourn without doing anything as to the State debt, and I felt that I had done my duty and would let them go, but just at this time I received the telegram, Exhibit No. 2, to Calvin Amory Stevens' deposition, and upon the receipt of this telegram, I at once convened the legislature and sent them a second message; that telegram alone induced me to convene the legislature, and but for it I would not have convened them in the second extra session; it had been suggested to me on the day before, but I yielded to Stevens' telegram because I knew from the books he was a large bondholder, and I believed from his telegram he expressed the sentiments of most of the bondholders. 10 11

Neither B. F. Wilson, R. T. Wilson or C. M. McGhee had, nor attempted to exercise, the slightest influence upon my conduct to bring about a settlement of the State debt through the Legislature, nor made any effort to do so, except that on the 10th of December, 1877, B. F. Wilson handed me a telegram from his brother, R. T. Wilson, in which R. T. Wilson said his house held or represented some Tennessee bonds, and that they were willing to accept that compromise of 50 cents on the dollar. 12

I am satisfied my first communication after the meeting of the New York arbitrators was with Messrs. E. D. Morgan & Co. I wrote them because of the high standing and character of Governor Morgan, and I knew he had a controlling influence among the bondholders of the State, and I communicated

13 with them often on this subject. As will be seen from the letter of July 7, 1877, from Messrs. E. D. Morgan & Co., Exhibit B to my deposition, I had written to them June 29th, 1877, asking if a settlement of the State debt as proposed on the basis of the New York arbiters would be acceptable to the bondholders, and in their reply they say they will consult the bondholders they represent, and write. And they did, as will be seen from their letter to me of October 19th, 1877, in Exhibit B to my depo-
14 sition hereto.

I had personal interviews with Mr. Peter Geddes in reference to the compromise of the State debt both in New York and Nashville. While he was in Nashville he was in consultation with other gentlemen and myself, who were friendly to and urging the compromise of the State debt. I did not have a doubt of the validity of the debt, and the absolute and entire liability of the State to pay it, and my efforts to bring about an adjustment did
15 not have the slightest reference to the railroads or a single railroad interest; nor was my action influenced by any opinion that in any contingency were they liable for it, or any part of it. And in all of my correspondence with the bondholders no one of them ever intimated a contrary opinion.

The financial condition of the Memphis and Charleston Railroad Company during my administration was so deplorable that I really feared the State would lose the debt due from the road. The
16 company was about to default in the payment of the interest on its debt, and its officers came to me and told me before the interest fell due, that they could not meet it, and asked me if I would put a State Receiver in charge if they defaulted. I told them that I would—that I would treat them as I had others. They told me the road would settle the entire debt under the Act of 1869–70 if let alone. I

did not think it could, and told the officers of the road that if they wanted to hold it they must put up a guarantee for the defaulted interest and they did put United States bonds, and I held them as indemnity for the defaulted interest until the road finally paid its entire bonded debt; although they repeatedly applied to me to relinquish the indemnity so as to enable them to buy bonds and pay off the bonded debt, but this I refused to do, and held the indemnity until they settled the entire bonded debt.

During my administration the Mississippi Central Railroad defaulted, and I at once put it into possession of the State Receiver, under the Act of 1851-2, and I so held the road from Kentucky to the Mississippi line until the purchasers paid off the entire bonded debt of the road under the Act of 1869-70, and I refused from time to time applications from the Receiver of the United States Court, holding for the mortgagees, to pay the defaulted interest, and I told him I would not release the road until the entire bond debt due from it to the State was paid, and I so notified the purchasers before their purchase of the road under the decree of the United States Court, that I would give no one charge of the road until its entire bond debt was paid, and I held it until they came up and paid it under the Act of 1869-70. Under the Internal Improvement Act the stockholders, upon the payment of the defaulted interest, were entitled to the management of the road, and I know the purchasers had no such right under the law, and I used this power to coerce from them the payment of the entire bond debt under the Act of 1869-70. The Mississippi and Tennessee Railroad during my administration settled their bond debt under the Act of 1869-70. Legal proceedings on behalf of the State had been begun before I was Governor for the sale of the deliquent roads, the

Knoxville and Charleston and Tennessee and Pacific, the sales of these two roads were perfected during my administration under the Act of 1869–70, the payments for them were received by me and the possession of the roads delivered to the purchasers. The interest collected and paid over by the Receiver of the Mississippi Central Road passed into the treasury as ordinary revenue. No claim was ever made by the holders of coupons of the bonds issued to that road for the interest collected by my Receiver. I am a lawyer by profession; I was elected Judge of the 12th Judicial Circuit at the regular election in 1870, for the full term of eight years, and I resigned after a service of 3½ years.

I have never had the slightest interest in or connection with any railroad, except as Governor of the State and representing her interest I have on the hustings a hundred times told the people I believed they were liable for the whole debt and ought to pay it. And I have never advocated the payment of less than that except where I believed it was best for the creditor and he was willing to take it. And in all of my recommendations to the Legislature to pay less, it was where the propositions came from the bondholders. And in my biennial message to the Legislature just as I retired from the office, I told them I believed it would be best for the people to shoulder and pay the entire debt; said passage of said message is hereto made, Exhibit "C."—And further saith not.

JAS. D. PORTER.

Subscribed and sworn to before me, March 9th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A."

To Jas. D. Porter's Deposition.

NEW YORK, December, 1877.

To His Excellency, JAMES D. PORTER, Governor of Tennessee:

SIR: The undersigned holders of bonds of the State of Tennessee, believing that the best interests of Tennessee, and of her public creditors, will be served by an early permanent adjustment of the claims of such creditors on a basis honorable to the State and equitable to them, respectfully ask your Excellency, in the full belief that such a settlement is practicable, to recommend that the Legislature of Tennessee, as early as may be possible at its ensuing session, appoint a commission to come to this city, and confer with the holders of bonds of the State of Tennessee, for the purposes mentioned herein.

We remain your Excellency's most obedient servants.

GEO. SMITH, London, England,
by GEDDES & SMITH, agents, &c.
BROWN BROTHERS & Co., agents.
DREXEL, MORGAN & Co.,
E. D. MORGAN & Co.,
WARD, CAMPBELL & Co.,
JAMES G. KING'S SONS,
Agents for holders.
GEORGE W. STANTON,
P. GEDDES.

EXHIBIT B

To Jas. D. Porter's Deposition.

Governor's Message.

MESSAGE

of

Governor Jas. D. Porter

to the

FORTIETH GENERAL ASSEMBLY

of the

STATE OF TENNESSEE.

FIRST EXTRA SESSION.

December 5, 1877.

NASHVILLE, TENNESSEE.

PRINTED AT "THE AMERICAN" BOOK AND JOB ROOMS.

1877.

GOVERNOR'S MESSAGE.

Gentlemen of the Senate and House of Representatives:

I have convened the General Assembly in extraordinary session for the purpose of considering the following recommendation to adjust the State debt: "*That after adding the arrears of interest the*

aggregate amount of the State debt should be reduced by funded by the issue of new bonds at the rate of sixty per cent. of the total amount; i. e., for every sum of one thousand dollars, new bonds should be given in exchange and full settlement for six hundred dollars, or for proportionate amounts, the new bonds to carry six per cent., payable semi-annually in the city of New York, the principal payable in thirty years, the interest coupons to be received by the State for all taxes."

This is the recommendation made by a Committee of Arbiters, appointed at a meeting of citizens held at the Clearing House in New York City, in January, 1877, after a conference with the delegation appointed by the General Assembly. On the 28th of February, 1877, in a special message, I urged the General Assembly to await this committee of conference, and recommended that all questions touching the State debt "be postponed to await the action of the arbiters," and announced that if this policy was adopted, "and if time becomes essential I will not hesitate to convene the General Assembly in extraordinary session."

On the 19th of March, 1877, the Legislative Committee reported to the General Assembly the result of the conference; seven days thereafter the two Houses adjourned without taking action upon this report. Under the circumstances mentioned, I have recognized it as my duty to call you from your homes to consider this recommendation, and to respectfully and earnestly recommend its adoption.

Since the adjournment of the General Assembly, the debts due from the Memphis & Charleston and Mississippi Central Railroads have been paid; deducting the sum of $200,814, the amount of the debt of the Mississippi and Tennessee Railroad, not due, and for which the State has ample security, the debt of the State on the first of January, 1878,

will amount to $23,212,606; this includes the bonded debt not due, the bonded debt past due, five full installments of interest, and balances of several installments not presented, amounting to $40,000. The greater part of this debt was incurred prior to 1861. The following table exhibits the amount issued since the late war between the States, the amount canceled and the amount now outstanding:

	Regist'd and not canceled.	Regis'd and canceled.	Canceled before Registration.	East Tennessee Univ'ity.	Mineral Home.	Unaccounted for.	Total.
Green, no letter	388	321	7021	113	120	37	10,000
" "B"	645	114	4283	100	....	61	5,203
" "C"	598	60	1401	2	....	139	2,200
White, "D"	2416	429	2006	37	....	53	4,941
Grand Total	6047	924	14711	252	120	290	22,344

The first series, Green, no letter, were issued under the Act of 1851-2, and amendments, $9,593,000 issued to railroads and turnpikes, and $407,000 were renewals of bonds past due. The second series, Green "B," were issued under authority of the Act of 1851-2, $200,000 were renewals for past due bonds, the balance issued to railroads and turnpikes. The third series, Green "C," and fourth series, White "D," issued under Acts of 1866 and 1868, were for past due interest, and known as Funding Bonds. This table shows that there are now outstanding $3,033,000 of the bonds popularly known as "Brownlow Bonds."

The debt is accumulating at the rate of four thousand dollars per day, and if the present condition of affairs continue, it is an easy calculation

to determine how much the debt will gain volume enough to destroy the prosperity of the State and bring disrepute upon all of its citizens.

THE VALIDITY OF THE BOND.

No question can now arise as to the validity of the public debt with the exception of the inconsiderable amount issued to Mineral Home Railroad, which has been declared fraudulent; the people of Tennessee, through their representatives, have in the most formal and solemn manner recognized it by the bonds of any series being declared receivable in payment of the purchase money for delinquent railroads. It was again recognized by the funding act of 1923, by which the obligation of the State was renewed by paying interest on the entire debt and the principal at maturity, and the validity of the several series of bonds have been recognized by the 30th and 40th General Assembly by being declared receivable in discharge of debts due to the State, and I assume that no judicial tribunal would now pronounce against the funded and registered bonds.

But the New York arbitrers say in the report made to the General Assembly, after a full discussion with the legislative committee, "when all the circumstances under which the debt was incurred, the peculiar condition of affairs in the State together with its present ability and its future resources," that the compromise recommended by them is "just and fair both to debtor and to creditor." The adoption of this recommendation of a tribunal so disinterested and distinguished without consulting the holders of our bonds, would reflect the State of the cognition of unfairness or of the charge of repudiating an acknowledged liability. But such a number of the bondholders have signified their willingness to accept the terms of the adjustment as

45 to satisfy me that if it is made it will be generally acceptable. I transmit the proposition of the bondholders. The terms are liberal to the State, the creditors voluntarily make the suggestion, and it is consistent with the dignity of the State to accept the abatement. The financial condition of the State is the only barrier to immediate prosperity. Its greatest want is capital and immigration. Both will avoid us unless the public debt is provided for. Men do not buy where the tenure of property is in-
46 secure, or where public obligations are disregarded. One of the highest duties of the citizen is the maintenance of the public credit; without it little is left worthy of public preservation.

THE ABILITY OF THE STATE.

There is to my mind no question as to the ability of the State to meet the interest on the debt, if adjusted upon the terms offered by its creditors. The present assessed value of the property of the State
47 is $236,000,000, and is an unusually liberal one to the tax-payer. Tennessee contributes to the markets of the world, with her cotton, grain and tobacco as largely, and is as rich in soil, minerals and productions as any State in the Union. The value of the principal crops raised in Tennessee during the year 1876, amounted to $47,126,310, not less than one-third of which was surplus. The productions of the State of Kentucky for the same period was $2,687,560 less. Tennessee produced seventeen millions
48 more than Virginia, three millions more than Georgia, more than Maryland and South Carolina combined, more than Alabama and Florida, and seventeen million more than North Carolina, while the difference in population is in favor of Kentucky and Georgia, and Maryland and South Carolina combined. The productions of the State for the year 1877 amounted to over $52,000,000, with an

increase surplus of cotton, wheat and tobacco, and the value of farm products is greater per capita in Tennessee than it is in any of the States named, and greater, according to the last census report, than it is in the rich States of New York, Pennsylvania and Missouri. These are other productions of the State, cattle, mules, horses, sheep, hams, fruit, marble, iron, from which large revenues are derived, with an increasing area and capacity for productions.

The bonds of the State were issued for purposes of internal improvement, very many of them were sold above par, and are now held by the original purchasers, by educational and charitable institutions; among the latter class is the Peabody Institute, at Baltimore, Maryland, which has signified through the proper officer a willingness to accept the terms of the proposed adjustment; the greatest American philanthropist, George Peabody, left as part of the endowment to this Institute that bears his name, $284,000 in bonds of the State of Tennessee. Since 1868 the children of Tennessee have received from the Peabody Trust Fund, for their education, the sum of $237,450, and for the year 1878, an appropriation that will make it exceed $250,000. The State of Tennessee cannot, in my opinion, accept this abatement, or that proposed by the holders of bonds issued for the erection of the Capitol, those held by educational institutions, by charities, or by persons whose guardians made the investment in pursuance of our statute authorizing the investment of the estate of minors in the bonds of the State.

If the adjustment recommended is adopted, I recommend that the new bond shall bear date July the first, 1878, to carry interest from that date; provision for a Sinking Fund can with propriety be postponed, but in case of a surplus in the Treasury

after liquidating the appropriations made by law, it would be well to provide for its investment in the bonds of the State, and in this way inaugurate a system for the gradual extinguishment of the principal of the debt.

THE COLLECTION OF THE REVENUE.

The Comptroller of the Treasury, in his biennial report to the General Assembly, states that "it is believed that the compensation allowed Trustees is inadequate to the labor and responsibility of the office, especially in the smaller counties where there is little or no municipal taxes to be collected;" experience has confirmed the wisdom of this recommendation; in one of the counties of the State there is no collector, no one being willing to accept the office for the compensation allowed by law; in several others resignations have been tendered. The revenue cannot be efficiently collected in the smaller counties for an inadequate compensation, and I recommend such an amendment to the statute as will secure this result.

It will be necessary to provide by law for the expenses of this extraordinary session of the General Assembly.

CONCLUSION.

The gravity of the question submitted to you will, I doubt not, command your most deliberate consideration; counselling wisdom and calmness in its discussion, I leave it with you, in the confident belief that your action will be controlled by your convictions of duty to your constituents.

JAMES D. PORTER.

GOVERNOR'S MESSAGE.

LETTER FROM JOHN R. MANNING, NEW YORK.

NEW YORK, November 1, 1877.

To his Excellency, JAS. PORTER,

Governor of Tennessee:

I am authorized on behalf of a large number of Tennessee bondholders to submit proposition of compromise by accepting sixty cents on the dollar for bonds and past due coupons, payable in new six per cent. consols, and ask you to convene the Legislature to carry out the compromise.

JOHN R. MANNING.

(Represents $2,000,000.)

LETTER FROM A. R. HALL, HUNTINGDON, TENN.

HUNTINGDON, TENN., November 23d, 1877.

Governor JAMES D. PORTER:

Sir: Since writing you yesterday I notice that the terms of my proposition differ somewhat from those contained in your proclamation. In order that not the least obstacle may be thrown in the way of settlement, I am willing to accept the terms put forth in your proclamation.

Very respectfully,

A. R. HALL.

61 LETTER FROM G. W. NORTON & CO., LOUISVILLE, KENTUCKY.

LOUISVILLE, KY., October 27, 1877.

JAMES L. GAINES, Esq., *Comptroller,*
Nashville, Tenn.:

Dear Sir: Your favor of 25th inst. is received and noted. As stated in ours of 24th inst., the members of this firm have held and owned Tennessee State bonds for more than twenty years, having faith
62 in them as a safe and good investment. The Clearing House Committee of New York, Geo. S. Coe, Esq., Chairman, recommended an adjustment of the State debt of Tennessee by issuing a new six per cent. bond, with coupons receivable for all taxes and dues to the State, to the extent of sixty per cent. of the principal and accrued interest of the present outstanding State bonds, and if the Tennessee Legislature would certainly adopt this plan of adjustment, without any modification whatever,
63 we would be willing to accept it, as far as we are concerned, and, as stated in ours of the 24th inst., we believe it would be generally accepted by the bondholders if promptly offered, but in our opinion, the bondholders would not accept any less than this. If the Legislature will certainly adopt the Coe recommendation, then we should be pleased to see an early called session of the Legislature. We have no objection to you placing this letter and ours of the 24th inst., in the hands of Governor Porter, as sug-
64 gested by you. Truly respectfully,

G W. NORTON & CO.

LETTER FROM EUGENE KELLY, NEW YORK.

NEW YORK, October 19, 1877.

To his Excellency, JAMES D. PORTER,
Governor of Tennessee:

Sir: The undersigned owners and representatives of holders of bonds of the State of Tennessee, beg to inform you that they are willing to accept new bonds of the State, having thirty years to run, bearing six per cent. interest, payable semi-annually in the city of New York, coupons to be receivable for taxes and all other dues to the State, at the rate of sixty per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully request Your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants,

EUGENE KELLY.

(Holds $297,000.)

LETTER FROM W. G. STANTON, JR., AND E. D. MORGAN & CO. NEW YORK.

NEW YORK, October 19, 1877.

To His Excellency JAS. D. PORTER,
Governor of Tennessee:

Sir: The undersigned owners and representatives of holders of bonds of the State of Tennessee beg to inform you that they are willing to accept new bonds of the State having thirty years to run, bearing 6 per cent. interest, payable semi-annually in the city of New York; coupons to be receivable for

69 taxes and all other dues to the State, at the rate of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration, on the debts of the Southern States, provided the law is passed before the first of February next. The undersigned therefore respectfully request Your Excellency to convene the Legislature in extra session, and submit this proposition to it.

70 With much respect, we beg to remain

Your obedient servants,

G. W. STANTON, JR.
E. D. MORGAN & CO.

LETTER FROM BONDHOLDERS OF BALTI-
71 MORE.

BALTIMORE, October 19, 1877.

To His Excellency JAMES D. PORTER,
Governor of Tennessee:

Sir: The undersigned owners and representatives of holders of bonds of the State of Tennessee, beg to inform you that they are willing to accept new bonds of the State, having thirty years to run,
72 bearing 6 per cent. interest, payable semi-annually in the city of New York; coupons to be receivable for taxes and all other dues to the State, at the rate of 60 per cent. for the present bonds and past due coupons, in accordance with the terms of the award of the Committee of Arbitration on the debts of the Southern States.

The undersigned, therefore, respectfully request

Your Excellency to convene the Legislature in extra session, and submit this proposition to it.

With much respect, we beg to remain

Your obedient servants,

($444,700.) WILLIAM McKIM,
President of the Peabody Institute, Baltimore.
JOHN BOLGIANO,
SAMUEL L. PETERS,
FRANCIS WHITE,
JOSEPH H. RIEMAN,
A. RIEMAN,
THOS. WILSON,
A. D. O'LEARY,
DANIEL H. SHRIVER,
BENJ. W. BENNETT,
By D. H. Shriver.
JOHN CUSHING,
EDW. K. SCHAEFFER,
FRANCIS A. CROOK,
Treasurer of the Baltimore Equitable Society.
FRANCIS A. CROOK.

LETTER FROM E. D. MORGAN & CO., NEW YORK.

NEW YORK, July 7, 1877.

To His Excellency, Gov. JAS. D. PORTER,
Nashville, Tenn.:

Dear Sir: Your favor of the 29th ult., addressed to Messrs. Geddes & Smith and ourselves, has been received, advising that you propose to convene the General Assembly after the new assessment has been completed, in November, for the purpose of adjusting your State debt.

You ask if a settlement upon the basis proposed

77 by the Arbiters in March last will be acceptable to the bondholders, and desire us to confer with them and advise you. We will communicate with you later on, after learning the views of the foreign holders whom we represent, as also of some of the larger holders here.

We are told that it is represented in Tennessee that large amounts of your State bonds are held by parties who bought at late current prices. We beileve that very few are so held. Our observation
78 leads us to believe that nearly all the bonds which the necessities or fears of holders have forced to sale of late years have been absorbed by your railroads for settlement with the State. We find them generally held by original investors, who believe that your State will in the end pay them, principal and interest.

Very respectfully,

E. D. MORGAN & CO.

79

EXHIBIT C,

To Jas. D. Porter's Deposition.

THE PUBLIC DEBT.

The State has issued 49,393 bonds, amounting to $49,173,316.66; the number cancelled is 28,385, amounting to $28,163,016.66; the number now out-
80 standing as a liability against the State is 20,219, amounting to $20,221,300. In ten years the State has paid three installments of interest, seven are past due, amounting, after deducting $149,050 paid to educational and charitable institutions, to $4,052,-717, making a debt of principal and interest of $24,274,000.17. The settlement of this debt is paramount to all questions of legislation that can en-

gage the attention of the General Assembly; it in- 81
volves the honor and good name of the State, the
credit and honor of every one of its citizens; it is a
liability that was voluntarily contracted, and
whether it was wisely created or not, cannot now
be questioned. I hold, and have always believed,
that in the light of moral and legal duty, as a ques-
tion of commercial honor and of State pride, the
best settlement of the debt for Tennessee would be
to pay the entire debt according to the terms of the
contract; this would be a heavy burden, but when 82
it became oppressive a temporary suspension of the
interest payment could be made, and with a return
of prosperity, with a moderate increase of popula-
tion, and a reasonable development of our resources,
now in full fruition, the whole debt could be paid
without serious embarrassment to any one. But
the creditors themselves have relieved the State of
the necessity of providing of the entire debt by
offering such an abatement of the principal as to
bring its payment within the ability of the State 83
without making it burdensome. In December,
1877, certain creditors of the State proposed to
adjust that part of the debt held by themselves
upon a basis of fifty cents for principal and past
due interest, and offered assurances that the great
body of the creditors would accept the same terms;
this proposition was submitted to an extra session
of the Fortieth General Assembly, and its passage
earnestly recommended. I am satisfied that the
creditors making this proposition would still make 84
the adjustment; settled at fifty cents the debt would
amount to $12,137,000, the annual interest upon this
sum, at six per cent., would amount to $728,220.
I do not hesitate to again urge the acceptance of
this proposition.

Deposition of H. L. Claiborne.

UNITED STATES CIRCUIT COURT,

DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the
RAILROAD COMPANY,

versus

THE
RAILROAD COMPANY.

Deposition of H. L. CLAIBORNE, witness for defendants, taken in Nashville, Tennessee, March 11th, 1880, before L. W. HUMES, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present, W. Y. C. HUMES, for defendants.

H. L. CLAIBORNE, being first duly sworn, deposed as follows:

I will be sixty-one years old in a few days; I have resided in Nashville, Tennessee, nearly all of sixty years, and reside there now; I was General Book-

5 keeper, acting also for several years as Assistant Cashier of the Bank of Tennessee, beginning in 1849, and continuing until 1853, when I resigned, and was afterwards (I think in 1858) elected again to the same position in the bank, and held the position until the bank was taken possession of by the Government (in April or May, 1865), except for the latter part of 1853 and the years 1854-5-6 and 7, and the early part of 1858 I held that position in the bank; the Bank of Tennessee was the fiscal
6 agent of the State of Tennessee from the passage of the General Internal Improvement Act, in 1851-2, of the General Assembly of the State of Tennessee; the funds of the State were deposited in the Bank of Tennessee and its branches, to the credit of the Treasurer of the State; the State had no other treasury to my knowledge; I do not think that the State Treasurer or other State officials had any *proper safe* or other means provided for the safe keeping of moneys of the State; I do not know of
7 the Treasurer of the State keeping funds in any other bank except the Bank of Tennessee, and branches of the same; it was the duty of tax collectors or any other persons having money, the revenue of the State, to pay the same to the Treasurer of the State, or into the Bank of Tennessee and branches designated by the State Treasurer, and to his credit; I know this fact as to the Bank of Tennessee and its branches, I cannot remember distinctly, after so
8 many years, but think where there was no branch of the Bank of Tennessee, the Treasurer might have directed tax collectors to pay into other banks most convenient to the official thus paying moneys; when this was done, I think the Treasurer generally, if not always, withdrew that deposit by depositing his checks or drafts on such outside banks with the Bank of Tennessee at Nashville, and the bank

would collect and credit the Treasurer of the State 9
with the amount so collected. All disbursements
from the State Treasury were made as follows:
The Comptroller of the State would issue his paya-
ble warrant on the Treasurer of the State, the Treas-
urer would then issue his check on the Bank of Ten-
nessee, which bank kept an account with him, cred-
iting him with all moneys received, and charging
him with all moneys paid out on his check. As to
the payment of interest of the railroad companies,
under the Internal Improvement Act of the State 10
of Tennessee, 1851-2, all railroad companies were
required to pay the interest on the amount of bonds
issued to them, into the Bank of Tennessee, fifteen
days before the coupons of the State for interest, at-
tached to the bonds, and due semi-annually, fell due.
The Bank of Tennessee was notified by the State
officials of the amount of interest due by each rail-
road Company, so that when the companies came to
settle their interest, the bank officials would know
what amount to receive from each railroad company. 11
The interest payments received semi-annually by
the Bank of Tennessee, from the several railroad
companies during my official connection with the
bank, were placed to the credit of an account called
"Railroad Companies for Interest," and the amount
was afterwards charged off and went to the credit
of the Treasurer of the State, subject to his checks,
like all other moneys of the State, from whatever
source derived; I have heretofore examined the
books of the Bank of Tennessee, and find that the 12
interest so paid in by the railroad companies was
sometimes during the term of office of another gen-
eral bookkeeper of the Bank of Tennessee (Mr. Geo.
W. Seay) serving as such when I was not employed
at the bank, placed to credit of the railroad com-
pany paying, but no account was kept, nor attempted
to be kept with or in respect of the holders of the

5 keeper, acting also for several years as Assistant Cashier of the Bank of Tennessee, beginning in 1849, and continuing until 1853, when I resigned, and was afterwards (I think in 1858) elected again to the same position in the bank, and held the position until the bank was taken possession of by the Government (in April or May, 1865), except for the latter part of 1853 and the years 1854-5-6 and 7, and the early part of 1858 I held that position in the bank; the Bank of Tennessee was the fiscal
6 agent of the State of Tennessee from the passage of the General Internal Improvement Act, in 1851-2, of the General Assembly of the State of Tennessee; the funds of the State were deposited in the Bank of Tennessee and its branches, to the credit of the Treasurer of the State; the State had no other treasury to my knowledge; I do not think that the State Treasurer or other State officials had any *proper safe* or other means provided for the safe keeping of moneys of the State; I do not know of
7 the Treasurer of the State keeping funds in any other bank except the Bank of Tennessee, and branches of the same; it was the duty of tax collectors or any other persons having money, the revenue of the State, to pay the same to the Treasurer of the State, or into the Bank of Tennessee and branches designated by the State Treasurer, and to his credit; I know this fact as to the Bank of Tennessee and its branches, I cannot remember distinctly, after so
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The Comptroller of the State would issue his paya-
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of the Treasurer of the State, subject to his checks,
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source derived; I have heretofore examined the
books of the Bank of Tennessee, and find that the 12
interest so paid in by the railroad companies was
sometimes during the term of office of another gen-
eral bookkeeper of the Bank of Tennessee (Mr. Geo.
W. Seay) serving as such when I was not employed
at the bank, placed to credit of the railroad com-
pany paying, but no account was kept, nor attempted
to be kept with or in respect of the holders of the

coupons of the State bonds issued to the respective railroad companies paying their interest to the State semi-annually, and no attemptwas ever made to my knowledge,and we had no data or information which would enable the bank to apply the interest so paid by the respective companies to the particular coupons of the bonds issued to the respective Companies making the payments. Two accounts of the East Tennessee and Virginia Railroad Company for interest are shown me, the accounts are correct, in my handwriting, and I make them part of this deposition (marked A and B, respectively). There are receipts and bills rendered by the Bank to said Railroad Company at their respective dates, during my connection with the Bank as general bookkeeper. They are in my handwriting, and show the interest payments were made as so much interest owing by said Railroad Company to the State. The bills were rendered on that basis and receipted for accordingly. After the respective Railroad Companies on the 15th of each June and December had so paid the amount of interest so due to the State of Tennessee by deposit in the Bank of Tennessee, the Railroad Companies had no further dealing, control or account of the interest so paid, but left the State to pay its own interest through the Bank, as its fiscal agent, to the creditors of the State. From 1849 up to the commencement of the war the State of Tennessee invariably paid promptly, as they fell due, all her obligations, and had ample and readily attainable resources to do so. She never did, before the war, go to protest upon or permit to be dishonored or to remain unpaid at maturity any of her obligations, and no one thought of or contemplated the possibility of such a contingency happening so far as I know. The coupons were payable in the City of New York; the correspondent of the Bank of Tennessee in that city

was authorized by the bank to pay all coupons of 17
bonds of the State of Tennessee. The Merchants
Bank of New York was that correspondent, and
when they rendered accounts to Bank of Tennessee
would send coupons paid as vouchers of such
payment; the coupons were handed over by the
Bank of Tennessee to the State Treasurer, who
would issue his checks therefor, and his pass-book
with the bank was regularly balanced, all his checks
being handed to him when the pass-book was so
balanced, the checks being cancelled by the bank. 18
The railroad companies were the debtors to the
State for State bonds loaned them, and were re-
quired, as before stated, to pay the interest due by
them fifteen days before the coupons were payable
in New York by the State of Tennessee semi-an-
nually. As I have stated another bookkeeper of
the Bank of Tennessee (Mr. Geo. W. Seay), kept
separate accounts with the railroad companies for
interest paid by them to the State, but this course
of his amounted to the same thing, the accounts 19
were not kept so as to show the particular bonds
issued to any railroad company, or the interest on
any such particular bonds. The officials of the
Bank of Tennessee and the correspondent
Bank at New York did not and could not know the
coupons of bonds issued to any particular railroad
company; the coupons were paid indiscriminately, all
being paid as they were presented, and all being re-
turned to the treasurer of the State as received from
the bank which paid them. The Bank of Tennessee, 20
so far as I know, and I think I would have known
it, never knew the number of the bonds issued to
each particular railroad company; nor did the Bank
of Tennessee in any way act as the agent of any of
the railroad companies in paying interest for them,
on bonds issued to them, but the bank simply re-
ceived the amount of interest from the railroads as

provided by law, as before stated, fifteen days before the interest coupons fell due from the State. I know of no account kept by the Bank of Tennessee with the railroad companies except as before stated, and the bank could only officially know what amount of interest was due from any of the railroad companies by the information furnished by the State officials. The interest payments received by the bank from the various railroad companies were placed to the credit of an account called "Railroad Companies for Interest," or to the credit of the company paying, simply as a matter of convenient reference; it amounted to the same, however, as if directly carried to the credit of the State Treasurer, as all of these accounts had of necessity to appear in said Treasurer's account on the books of the bank of Tennessee when his account was balanced. The money paid was the State's money, as the State was liable for the coupons of all bonds issued by the State, whether to railroad companies or for any other purposes; as I have already stated, the bank paid as the fiscal agent of the State, and on its behalf, the interest on all the State bonds; the amount so paid was charged to the State (in the Treasurer's account) as so much paid for the account of the State. The State got credit on the books of the bank of Tennessee for all moneys paid into the bank, either by railroad companies or by other parties, and payments were made by the bank of Tennessee or by the correspondent of the bank, and all such payments were charged to the Treasurer of the State, and never charged to any of the railroad companies.

And further saith not.

H. L. CLAIBORNE.

Subscribed and sworn to before me, this March 11th, 1880.

L. W. HUMES,
Special Examiner.

EXHIBIT "A." 25

To H. L. Claiborne's Deposition.

EAST TENNESSEE & VIRGINIA R. R. CO.

WITH STATE OF TENNESSEE Dr.,

1859.

June 15—Interest on State Bonds due			
Et prol'd.....		48,060	
	CR.,		
June 11,	Currency $2,452.90		
	Less ¼ of Ex, 6.13..	2,446.77	26
13,	New York exchange	22,645.00	
	Currency $55 less ¼% Ex. $14.....	54.86	
14	New York exchange	14,943.96	
	Currency $3,945 less ¼% Ex..... 9.56	3,935.14	
15	New York exchange	4031.00	
	Specie for Balance...	3.27	
		48060.00	

H. L. CLAIBORNE. 27

Nashville, June 15, 1857.

G. B. K. Bank of Tennessee.

Endorsed.

"Bank of Tennessee Nashville,"

"$48,060."

(Other part of Exhibit "A." on next page.)

L. W. H.

Sp'l Ex'r.

28

29 BANK OF TENNESSEE.

NASHVILLE, July 7th, 1859.

SAM'L B. CUNNINGHAM, Esq., Prest.,
Jonesborough, T.,

Dear Sir:—I have yours of the 4th inst., is received. Below I give a full statement of the settlement E. T. & Va. R. R. interest, which you will find to be correct.

30	June 11,	Bank notes per express.....		$2,452 90
	" 13,	"	$55.00	
	"	958 Phenix bank, N. Y.	12,645.00	
		959 " "	10,000.00	
				22,700.00
	" 14,	881 Bank of Republic, N. Y.....	14,443.96	
	"	6,330 Merchant's bank N. Y. N. Y. ck....	500	
	"	McMahanlas to Bank		
31		of T.....	2,500	
	"	Bank Notes.....	1,445	
				18,888.96
	" 15,	New York Exchange of Porterfield.....		4,031.00
				48,072.86
	You owed interest.....			48,060.00
32	Balance Exchange on Currency paid by you.....			12.86

So you see the bank was correct in the settlement.

Very Respectfully yours,
H. L. CLAIBORNE,
for Cashier.

Endorsed:

"Bank of Tenn., Nashville."
"For Interest July 1, 1859."
"Entered June 30, 1859."

EXHIBIT "B." 33

"To H. L. Claiborne's Deposition."

THE EAST TENNESSEE & VIRGINIA R. R. CO.,
TO STATE OF TENNESSEE, DR.

Interest due 1st July, on 1,602 State Bonds	$48,060.00
¼ o/o Exchange on Currency	16.80
	$48,076.80

34

CREDITS:

American Exchange Bank	$530.95
Bank of the Republic	6,000.00
Phenix Bank	25,000.00
Bank of New York	10,000.00
Bill on N. Y,, $5,000 less discount $75	4,925.00
Leaving for balance	1,620.85
	$48,076.80

35

Nashville, 15th June, 1860.

H. L. CLAIBORNE, G. B. K.,
Bank of Tennessee.

Endorsed:

"Rec't."
"Bank of Tenn."
"for Int. July 1, 1865."

36

1

Deposition of Neill S. Brown.

Deposition of Neill S. Brown, witness on behalf of the defendants in the foregoing cases.

The said witness, being duly cautioned and sworn, deposes and says.

My name is Neill S. Brown; am aged 69 years, and am a practicing attorney and solicitor at Nash- 2
ville, Tennessee.

To interrogatory propounded he answers and says, that he was twice a member of the Legislature of the State, was twice or three times elected, and was once Governor of the State.

I bought among the first issue of the bonds issued for the building of the capitol, say in 1849 or thereabouts; I think I bought about $4,000 in such bonds and paid par therefor; I kept them until about the year 1854; I then invested them in a private enterprise at par; I then received from the enterprise my
interest therein in bonds issued by the State of Ten- 3
nessee for agricultural purposes, *at par*, and I afterwards sold said Agricultural Bonds in 1857 or 1858 *at par*.

The prices mentioned as paid for and received for said bonds was the market or ruling price for all bonds issued by the State at the times mentioned, and it continued so for sometime afterwards, and had been at all times from the first issuance down until the approaching rumors of war.

I have no interest whatever in any bond issued 4
by the State of Tennessee; I do own one hundred

5 dollars in stock of the East Tennessee and Georgia Railroad, besides which I have no interest in any bond or stock of any railroad company.

I have noticed the quotations of bonds of the State of Tennessee since the war, and do not remember that any difference was made in the quoted market price of the bonds issued to the railroads under the Internal Improvement laws, and other bonds issued by the State for other purposes.

6 (Complainant, by solicitor, excepts to the competency of this evidence, because irrelevant to the issue ; and especially to the last paragraph, because purely hearsay and not the best evidence.

S. WATSON,
Solicitor for the Compl't.)

The State of Tennessee owned the Bank of Tennessee, and made it the fiscal agent of the State ; it was so called and so recognized ; all the revenues of
7 the State were deposited with the Bank of every conceivable kind, and it (the bank) paid all the obligations of the State ; sometimes the balance was one way and sometimes the other.

Cross-examination :

The Union Bank of Tennessee was the fiscal agent of the State before the Bank of Tennessee was created. I never had any dealings with bonds ex-
8 cept as above stated.

And further deponent saith not.

NEILL S. BROWN.

Subscribed and sworn to before me, this 2d September, 1879.

E. R. CAMPBELL,
Examiner.

1

Deposition of Richard T. Wilson.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co., 2

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein. 3

NEW YORK, March 12th, 1880. 4

Present—MR. CHAS. H. TWEED,
For Respondents.
MR. E. L. ANDREWS,
For Complainants.

5 RICHARD T. WILSON, a witness produced on the part of the respondents in the above-entitled suit, being first duly cautioned and sworn therein to testify the truth, the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.

1 Q. Did you, on behalf of the East Tennessee, Virginia and Georgia Railroad Company, deliver to
6 the agent of the Comptroller of the State of Tennessee the bonds and coupons mentioned in the receipts signed by P. C. Calhoun, agent of the Comptroller, and dated June 10th, 11th and 14th, 1870, and forming together Respondent's Exhibit No. 4 on your previous examination?

A. Yes. I delivered those bonds and coupons to the agent of the Comptroller of the State on behalf of the East Tennessee, Virginia and Georgia Railroad Company, at divers dates between the 10th and
7 14th of June, 1870, taking such receipts therefor. And I also paid the sum of $11.10 in cash to make up the whole amount of the indebtedness of the East Tennessee, Virginia and Georgia Railroad Company at that time to the State of Tennessee.

2 Q. In addition to the receipts above referred to, did the East Tennessee, Virginia and Georgia Railroad Company afterwards receive from the Comptroller of the State of Tennessee a final receipt acknowledging the payment to him of the bonds,
8 coupons and cash, which you have just referred to?

A. It did. It was delivered on or about the eleventh day of August, 1870, and was and is as follows:

"COMPTROLLER'S OFFICE, } 9
"Nashville, August 11, 1870. }

"STATEMENT.

"Debt of E. T. & Va. R. R. Co., as per statement		$2,563,870 70
"Debt of E. T. & Ga. R. R. Co., as per statement		1,553,890 40
"Total amount due State July 1, 1870		$4,117,761 10

"CREDITS. 10

"I hereby acknowledge to have received from the East Tennessee & Virginia and East Tennessee & Georgia Railroad Companies the following number of bonds and coupons of the State of Tennessee in liquidation of said debt due to the State July 1, 1870, viz.:

3,835 State Bonds of $1,000 ea.	$3,835,000 00	11
9,425 past due coupons $30 ea.	282,750 00	
Currency paid 4th National Bank, N. Y.	11 10	
		4,117,761 10

Signed.
ED. R. PENNEBAKER,
[Seal State of Tennessee.] *Comptroller, &c.* 12

"The above amounts represent the entire indebtness of the railroads above mentioned, and have been credited with such amounts in my office.

ED. R. PENNEBAKER,
Comptroller, &c."

13 3 Q. Were you one of the purchasers of the Cincinnati, Cumberland Gap and Charleston railroad at the sale of that property under the State's lien?

A. I was one of the trustees who purchased that property on behalf of the East Tennessee, Virginia & Georgia Railroad Company.

4 Q. What was the purchase price?

A. $300,000, payable in Tennessee State bonds carrying the coupons due the first of January, 1871, and thereafter.

14 5 Q. Did you as such purchasers pay to the State of Tennessee that amount of the bonds of the State?

A. Yes; we paid those bonds to the State in accordance with the terms of the decree under which we purchased the property,

6 Q. Are you one of the trustees of the mortgage executed by the East Tennessee, Virginia & Georgia Railroad Company, dated June 1st, 1870; and, if so, please produce such mortgage.

15 A. I am one of the trustees, and will produce such mortgage to be annexed to this deposition.

(Mortgage produced, offered in evidence, and marked Respondent's Exhibit No. 1—W. H. D. L., Spl. Exr.)

7 Q. State how many bonds have been issued, and are now outstanding, under that mortgage.

A. There have been issued, and are now out-
16 standing in the hands of the general public, $3,123,-000 of those bonds.

8 Q. Are you also a trustee under the mortgage of the Knoxville & Ohio Railroad Company dated January 1st, 1876; and, if so, please produce such mortgage?

A. I am such trustee, and will produce such mortgage.

(Mortgage produced, offered in evidence, and marked Respondent's Exhibit No. 2—W. H. D. L., Spl. Exr.) 17

9 Q. How many bonds have been issued and are outstanding under that mortgage?

A. There are $500,000 bonds issued and now outstanding under that mortgage and in the hands of the general public.

10 Q. How many bonds have been issued and are now outstanding under the mortgage executed by 18
the Memphis & Charleston Railroad Company and dated the 20th August, 1877.

A. There have been issued and are now outstanding in the hands of the general public $1,400,000 of the first class bonds mentioned therein generally known as first mortgage bonds of the Tennessee Division of the road, which are secured through an assignment of the Tennessee lien under the tripartite agreement. There have also been issued under such mortgage $558,000 of junior bonds which are 19
not secured.

10 a Q. State, so far as you know, how and where the bonds issued under the mortgage just produced, executed by the East Tennessee, Virginia & Georgia Railroad Company and the Knoxville and Ohio Railroad Company and the Memphis & Charleston Railroad Company, are now held.

A. Those issued by the East Tennessee, Virginia & Georgia Railroad Company were mainly sold in Europe, and are held there now probably to the 20
extent of four-fifths of them, and I should say that the remaining fifth is held mainly in New York, Philadelphia and Baltimore, by a good many different parties; the Knoxville and Ohio substitution bonds are held mainly in New York, Boston, Baltimore and Ohio, by sundry persons.

10 b Q. Did any of the present holders of those

bonds, so far as you know, know at the time they became purchasers thereof, of any claim on the part of the holders of the bonds of the State of Tennessee, that bonds loaned to railroads were in any way a lien upon the property of the company to which they were loaned?

A. They were all negotiated before the bringing of these suits, and so far as I know before any public announcement of any such claim as is now attempted to be set up in these suits, and before the public who became purchasers of these bonds could have known of the existence of such claim on the part or behalf of the Tennessee bondholders; as previously stated, I held some of these bonds and had seen the Davies and Davis opinion which I had referred to my counsel but never read; he telling me it was unsound. And this opinion came into my hands then because I was interested in Tennessee railroads, and was not in any way circulated as a public document, so far as I know or believe, for the purpose of putting the purchasers of bonds upon notice of the existence of such a claim.

11 Q. At the time of the settlement of the East Tennessee, Virginia & Georgia Railroad Company with the State in June, 1870, what was the amount of any of the arrears due for interest and sinking fund from the East Tennessee, Virginia & Georgia Railroad Company to the State of Tennessee?

A. In June, 1870, at the time of making its settlement with the State, the East Tennessee, Virginia & Georgia Railroad Company was in arrears to the sinking fund for the instalment thereof, which became due on the first day of January, 1870, to the amount of $152,640 or thereabouts, being four per cent. upon the principal of its indebtednesss to the State of Tennessee at that time, and was also in arrears for the non-payment of the interest on its indebtedness to the State, which be-

came due on the 15th of December, 1869, to the 25
amount of $114,480 or thereabouts, and another interest instalment of a like amount was about falling due to the State on the 15th day of June, 1870; and by the laws of the State the railroad company, besides paying the semi-annual interest instalment, was required to pay to the sinking fund four per cent. annually on the first day of January, and under the law the property of the company was subject to be taken possession of and sold out by the State in consequence of the company's default in 26
respect to the sinking fund.

12 Q. In July, 1877, at the time of the purchase by Iselins of the State lien upon the Memphis & Charleston Railroad, how much was the Memphis & Charleston Railroad Company, if any, in arrears in respect of the interest and sinking fund payments due to the State?

A. At that time the Memphis and Charleston Railroad Company was in arrears to the sinking fund for installments due for several years pre- 27
viously thereto to the amount of $342,541.12, or thereabouts, and was also in arrears for non-payment of interest on its indebtedness to the State, which became due on the 15th day of June, 1877, to the amount of $50,157.40, and also in arrears to the amount of $14,742.40 for the non-payment of a portion of the interest on its indebtedness to the State, which became due on the 15th day of December, 1876, and under the law it was subject to be taken possession of and sold by the State in consequence 28
of such defaults to the sinking fund, and the State had been actually threatening to take possession of the road under its statutory rights.

13 Q. Have you procured from the records of the office of the Comptroller of the State of Tennessee a statement showing the amount paid in by railroads through the retirement of their debts to the State

29 and by sinking fund payments made since January, 1870, and the sales of railroads and other particulars in respect to these matters?

A. Yes, I have procured such a statement, and I now produce it to be annexed to my deposition, with a summary statement of the results thereof, showing payments to the State of bonds, coupons, and money by the railroads, including the payment previously made by the Louisville and Nashville Company, amounting in all to $22,664,827.28.

30

(Statement produced; marked Respt's Exhibit No. 3—W. H. D. L., Spl. Exr.)

14 Q. State, as nearly as you can, what was the amount of the total bonded indebtedness of the State on the 20th day of January, 1870?

A. As nearly as I can state it, and I was pretty familiar with the debt of Tennessee, it was about $37,854,734 of principal, on which there was past
31 due interest amounting to about $2,346,070, making a total of about $40,200,805, about $21,962,827 of which has since that date been realized from the disposition by the State of the railroad assets which it then held.

15 Q. Does the above indebtedness embrace the liability of the State as endorser on the city and railroad bonds endorsed by it?

A. It does not. In addition to the above indebtedness the State was liable as endorser on city and
32 railroad bonds to the extent of about $2,196,000; most, if not all, these endorsed bonds were outstanding on the 20th of January, 1870.

16 Q. Was the settlement made by the Louisville and Nashville Railroad Company with the State of Tennessee of its indebtedness for bonds loaned by the State open and public and notorious?

A. Yes, it was, and besides other publicity given

to it, it fully appeared by the proceedings in the 33
Legislature of the State of Tennessee in the year 1865, including a resolution adopted May 5, 1865, appointing commissioners to settle with that Railroad Company, and the said Commissioners did settle with the Railroad Company, and made a report of that fact to the Legislature of the State of Tennessee, dated November 18, 1865. I produce a copy of this resolution and report to be annexed to my deposition.

17 Q. Was the pendency and passage of the Acts 34
of the Legislature of the State of Tennessee of 1869–70, in respect to the relations between the railroads and the State of Tennessee, open and public and notorious?

A. I was not present in Nashville at either of the sessions of 1869 or 1870, so far as I now remember, but it was a matter of great public concern, provoked considerable discussion and comment, all of which, including the Acts, were published in the newspapers, and attracted a good deal of attention. 35

18 Q. Was the making of settlements between the different railroad companies of Tennessee and the State, in respect of their indebtedness, open and public and notorious when the same took place?

A. Yes, in a certain sense it was public, open and notorious; my firm conducted a very large proportion of the settlements of what were called the solvent roads, or the class that retired their debts and were not sold out, and while we did not state to the public generally while purchasing the bonds that we 36
would at a certain day retire the debt of this or that road, it was nevertheless a fact well known generally, and I always mentioned it to the bondholders of the State, many of whom came in to get information respecting the prospects for the resumption of interest and the settlement of the State debt, and uniformly, and I believe universally, I spoke of this scheme of

retiring the railroad's debts and reducing the indebtedness of the State through these laws and through the sale of the insolvent roads as the only feasible remedy which was open to my mind for the resumption of the interest on the part of the State; in the course of these business transactions I applied to a number of prominent houses in New York and Philadelphia, and the agents of some foreign houses, to induce them to join in furnishing the money with which to conduct these settlements; and in the instance of the East Tennessee, Virginia & Georgia Road, I went to Messrs. E. D. Morgan & Co. and made personal application to Gov. Morgan, with whom I had formed a passing acquaintance, mainly growing out of his interest in the bonds of the State of Tennessee, my former residence there having given me, as he supposed, some opportunity of obtaining more correct information as to the probable course of Tennessee in respect to its indebtedness; and hence when I was ready to undertake the negotiation for the settlement of the indebtedness of the East Tennessee, Virginia & Georgia Railroad Company to the State, my mind first fell on his house as being a strong house of high standing and well known in the streets of New York, and as the proper parties to associate with me in procuring the necessary funds. I went to the office of E. D. Morgan & Co. on several occasions, and after conversing more or less generally on the Tennessee debt subject, I solicited him to make an exchange of their Tennessee State bonds for railroad bonds, to be issued by the East Tennessee, Virginia & Georgia Railroad Company under the acts of 1869-70. I first suggested this method of making an exchange of Tennessee bonds for the bonds of the company on some basis to be agreed upon to be satisfactory to all parties, to enable the company to make a settlement with the State and close out their indebtedness.

I told Governor Morgan that I thought that if the 41
scheme that was contemplated under the acts of 1869 and 1870, and the act for the sale of the insolvent roads could be carried out it would certainly relieve the State, and he agreed with me in thinking so, and that it would enable it to restore its credit. I cannot say whether or not Governor Morgan ever seriously considered the subject of joining with me in the retirement of the debt, but I can certainly say that I explained to him fully my intention in regard to settling with the State the debt which the 42
East Tennessee, Virginia & Georgia Railroad Company owed to it, and he fully approved of such a course being pursued as the best means, and I may say the only means by which the State of Tennessee could be placed in such a position as would enable her to manage her debt most advantageously to all her creditors and herself. And as I have previously stated in this deposition, I had frequent talks with Mr. Peter Geddes about the proposed settlement of railroads with the State, and especially and par- 43
ticularly about the settlement of the Memphis and Charleston Railroad Company's indebtedness to the State, in all of which he showed the same anxiety that I did to have the debts of the railroads to the State settled as proposed, and the State and the railroads divorced, so to speak, from each other. In fact he was exceedingly solicitous to have this separation entire and complete through settlements made by the railroad companies under the acts of 1869 and 1870, and by the sale of the insolvent 44
roads.

19 Q. Were the sales of the insolvent roads also open and public and notorious?

A. Yes, they were.

20 Q. Did you ever know or hear of any action or proceeding being taken of any kind by any bondholder of the State of Tennessee, either in opposi-

45 tion to the settlement with the Louisville & Nashville Railroad, or the passage of the acts of 1869 and 1870 in respect to the relation between the railroads and the State or the settlements thereunder, or to the sales of the insolvent roads made by the State?

A. No, I do not think any such action or proceedings were ever taken; I certainly never heard of any.

21 Q. Have the Knoxville and Kentucky Railroad
46 and the Cincinnati, Cumberland Gap and Charleston Railroad been held by and in possession of the Knoxville and Ohio Railroad Company and the East Tennessee, Virginia and Georgia Railroad Company or R. T. Wilson and C. M. McGhee, trustees, since the time of the purchase of those respective roads?

A. They have been held continuously in the undisputed possession as to the Knoxville and Kentucky Railroad of the Knoxville and Ohio Rail-
47 road Company, and as to the Cincinnati, Cumberland Gap and Charleston Railroad of R. T. Wilson and C. M. McGhee, trustees, and afterwards of the East Tennessee, Virginia and Georgia Railroad Company as transferrees from them.

22 Q. Have you been familiar with the dealings in the New York market in respect to the State bonds of Tennessee since the year 1866?

A. I came here in the summer of 1866, and commenced business in the fall of that year, and since
48 that time I have been more familiar than almost anyone else in New York with the dealings in New York in regard to the bonds of the State of Tennessee.

23 Q. State whether there has been at any time in New York any difference in price between bonds loaned to railroad companies and bonds issued by the State for other purposes, or between those

loaned to railroads of undoubted responsibility and 49
those loaned to railroads which had been sold out
by the State.

A. There never has been any difference, nor is now any such difference in the market price of the bonds in the city of New York, except that shortly before the commencement of these suits I heard that one of the complainants was offering a small premium to exchange bonds which he had for bonds loaned to solvent railroads.

24 Q. Did you ever know or hear of any of the 50
bonds of the State of Tennessee being bought or sold as carrying any lien upon the railroad to which they had been loaned?

A. I never did, with the exception mentioned above.

25 Q. To what extent, as nearly as you are able to say, have been your dealings in bonds of the State of Tennessee?

A. It is difficult for me to estimate the exact amount; I have bought, however for the purpose 51
of retiring the debts of the roads to the State, and for making payments for sold roads purchased, about fifteen million dollars of these bonds, and I should think that the dealings of my house, including the number bought for railroad purposes as just stated, would aggregate fully twenty millions of dollars; and I never did in the purchase of all these bonds hear of them carrying a lien on the roads to which any of them were loaned, nor did I ever sell a bond of the State of Tennessee which I 52
represented, or authorized any one to represent, as carrying a lien upon the road, nor did I ever hear of any such understanding on the part of any purchaser from me.

26 Q. What proportion of the bonds dealt in by you were dealt in at the Stock Exchange in the City of New York?

53 A. Nearly all of them; in fact I do not now remember that we ever bought as much as a hundred thousand dollars of bonds off the Stock Exchange; the dealings were almost universally confined and always have been, as far as my information goes, to the New York Stock Exchange.

27 Q. Please state at what time since the war the State of Tennessee has paid interest upon its obligations, and during what portion of the time she has been in default thereon?

54 A. She has been in default on her interest obligations all the time since the war, except that she paid installments of interest in 1867 and 1868, and after the settlements were mainly made between the railroads and the State; she paid three installments of interest in 1874 and 1875, since which time no interest has been paid by her upon any of her obligations.

55

MARCH 29, A.D. 1880.

Present—Counsel as before.

Cross-examination by Mr. ANDREWS:

28 x Q. Did not a holder of Tennessee bonds, about the year 1869 or '70, make demand or claim upon one of the railroads, of which you are an officer, or upon you as their representative in respect of their
56 liability for the payment of the Tennessee bonds issued to them?

A. No holder of a Tennessee bond issued to a railroad with which I have had any connection, or to any other railroad, ever made any demand or claim upon such railroad, so far as I have any knowledge or recollection upon the subject, until these suits were brought.

29 x Q. What did you get Mr. Southmayd's opinion for? 57

A. I got it as to the legal status of the question—what the law meant. I gave him the Act and asked for his interpretation of it.

30 x Q. Why did you not communicate to James A. Roosevelt and James P. Wallace that the committee of Tennessee bondholders had obtained the opinion of Judges Davies and Davis, to the effect that Tennessee State bonds were liens upon the railroads to which they were issued? 58

A. Firstly, as I have stated before, I did not believe it was sound, and was so advised by Mr. Southmayd. My impression of it at the time it was obtained was that it was intended as a mere scare against somebody or other.

Further, as it was addressed to Mr. Donaldson, as chairman of the Tennessee bondholders' committee, it was their business to circulate it if they believed in its soundness. Certainly I did not consider it my business as I did not believe it. 59

31 x Q. When did you first know Mr. Peter Geddes?

A. I should think in 1874 or '5, somewhere along there, but I really do not remember.

32 x Q. Did you know him in 1875?

A. I am inclined to think I did.

33 x Q. Would you swear that you knew him before 1876?

A. I will not swear exactly when my acquaintance began with him more precisely than I have done. 60

61 APRIL 3d, 1880.

Present—MR. TWEED, for Respondents.
MR. ANDREWS, for Complainants.

34 x Q. Did you know Mr. Peter Geddes in 1879?

A. Yes.

35 x Q. Did you know him in 1878?

A. Yes.

36 x Q. Did you know him in 1877?

62 A. Yes; I think I did.

37 x Q. Did you know him in 1876?

A. I think so; it is my recollection that I did.

38 x Q. In 1876 how many roads in Tennessee had not delivered to the State bonds under these substitution and selling out laws?

A. As I now remember, the Memphis & Charleston, Mississippi & Tennessee, Mississippi Central, Tennessee & Pacific, and, probably, the Knoxville & Charleston, but some of these roads had delivered
63 some bonds to the State—I refer to the sold out roads.

39 x Q. Is not the Act for Substitution, referred to in your deposition as the Act of July 25, 1869, intended to be referred to as the Act of February 25, 1869?

A. I don't know where in my deposition I have referred to this Act, but I think the latter is the date of the Act.

40 x Q. Were not the substitution bonds of near-
64 ly every railroad in Tennessee that issued them, except the Memphis & Charleston, and perhaps two inferior or small roads, issued and sold before 1874?

A. I can only speak definitely as to when they were issued and sold as to the following roads: The substitution bonds of the E. T., Va. & Ga., the Mobile & Ohio, Nashville & Decatur, Nashville, Chattanooga & St. Louis, Knoxville & Ohio, as I now re-

member, were issued and sold before 1874, or mainly so. 65

41 x Q. Is not this pamphlet the prospectus to which Chas. Tracy's opinion is attached?

A. I think so.

(Complainants' counsel offers said pamphlet in evidence, except opinion of Chas. Tracy already in evidence.)

(Marked Complainants' Exhibit No. 1, W. H. D. L., Spl. Exr.) 66

R. T. WILSON.

Subscribed and sworn to before me, this 3d day of April, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence; and that the exhibits hereto annxed, marked Complainant's Exhibit No. 1, W. H. D. L., Spl. Exr., and Respondent's Exhibits Nos. 1, 2, and 3, W. H. D. L., Spl. Exr., were introduced in evidence in said cause during the taking of said deposition. 67 68

Dated April 3, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

69 RESPONDENTS' EXHIBIT NO. 1,
W. H. D. L., Sp'l Ex'r.

DEED OF TRUST OR MORTGAGE.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY,

To Philo C. Calhoun, Richard T. Wilson and
70 *Adrian Iselin,*

Of the City of New York.

DATED JUNE 1ST, 1870.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY

71 *to*

PHILO C. CALHOUN, RICHARD T. WILSON and ADRIAN ISELIN, *Trustees, of the City of New York, Dated June 1st*, 1870.

This Indenture, made this first day of June, one thousand, eight hundred and seventy, between the
72 East Tennessee, Virginia & Georgia Railroad Company, a corporation created, organized and operated under and in pursuance of the laws of the States of Tennessee and Georgia, and herein designated party of the first part, and Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, all of New York city, and herein designated parties of the second part.

Whereas, the East Tennessee, Virginia and Geor-

gia Railroad Company was formed and has its ex- 73
istence by virtue of law, by the consolidation of the East Tennessee & Virginia Railroad Company with the East Tennessee and Georgia Railroad Company, and whereas, by virtue of such consolidation, and of the laws under which the said first party was created, and of it organization, and in the exercise of its corporate rights, powers and franchises, the said first party became and is invested with all and singular the corporate rights, powers, privileges and franchises, and likewise with, and owner and occu- 74
pier of all property, real, personal and mixed, and of all debts due, things in action, rights of way, contracts, and all and every other interest whatsoever, which were held, owned and lawfully possessed or exercised by, or which in any way or manner belonged or appertained to the East Tennessee & Virginia Railroad Company, and the East Tennessee & Georgia Railroad Co., corporations created and organized under and by virtue of the laws of the State of Tennessee, with certain rights and priv- 75
ileges under the laws of the State of Georgia, as fully and effectually as the same rights, powers, privileges, franchises, property, debts, contracts, rights of way and other interests were held, owned and exercised by the said last-named corporations, or either of them, at the time of the consummation of the organization executing these presents, but subject however, to all the then existing debts, liens, and other liabilities incurred, created or suffered by the same corporations, or either of them; such 76
debt, liens and liabilities having been, in the consolidation hereinbefore named, legally assumed by said party of the first part hereto, and

Whereas, the State of Tennessee did, at various times, extend aid by loan of the bonds of said State unto the East Tennessee & Georgia Railroad Company, and unto the East Tennessee & Virginia

Railroad Company, for which aid the said State of Tennessee does hold a statutory lien upon the Railroad property and franchises of said last-named corporations; and

Whereas, by laws of the said State of Tennessee, it is provided that the said corporations may make and issue first mortgage bonds covering the Railroad, property, rights and franchises of their corporations, which bonds may be issued as rapidly as bonds of the State of Tennessee are surrendered up to said State by such companies in part payment and discharge of the indebtedness of said corporations to the State of Tennessee for its bonds issued in aid of said corporations to an amount equal to such payments so made from time to time on account of the said indebtedness to the State, and that such bonds so issued, being certified by the Comptroller of the State of Tennessee, acting by himself or through an agent in New York, as in said act prescribed, shall be a lien pro rata in amount and of equal validity and effect with the unretired part of the said State indebtedness upon such railroads, property, franchises, fixtures, and materials.

And Whereas, To enable the said party of the first part to liquidate, pay, satisfy and fully discharge the said indebtedness to the State of Tennessee, and also for the purpose of perfecting its line of railway, and enlarging the capacity, and extending the operating facilities for the business thereof, the said party of the first part has, by the Board of Directors and by convention of the stockholders, extrusted with the control and management of its affairs.

Resolved, To borrow money to an amount not exceeding in the aggregate the sum of ($3,500,000,) three million and five hundred thousand dollars,

and to that end to issue, and raise money by the 81
sale and negotiation of its bonds bearing date the first day of June, Anno Domini One Thousand Eight Hundred and Seventy.

The following is the form of bond and coupon, but may be issued in such denominations as to suit the convenience of the Company:

FIRST MORTGAGE BONDS.

UNITED STATES OF AMERICA.

82

$1,000. $1,000.

The East Tennessee, Virginia and Georgia Railroad Company promise to pay to the holders of this bond, on the first day of July, One Thousand, Nine Hundred ——— for value received, the sum of

ONE THOUSAND DOLLARS.

in lawful money of the United States, in the city of New York, with interest at the rate of seven per 83
cent. per annum payable semi-annualy, on the first day of July and January of each year on delivery of the annexed interest warrant.

This bond, with others of like tenor and date, amounting in the aggregate to a sum not exceeding three millions, five hundred thousand dollars, is secured by a first mortgage on the railroad and franchises of said company, made to Philo. C. Calhoun, Adrian Iselin and Richard T. Wilson, and is entitled to the benefit of a sinking fund as set forth 84
in the deed of trust.

This bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the transfer agent of the company, no transfer except on the books of the company shall be valid, unless the last transfer be to Bearer.

85 IN WITNESS WHEREOF, The said East Tennessee, Virginia and Georgia Railroad Company has caused this Bond to be signed by its President or Vice-President and Secretary, and its corporate seal to be hereunto affixed at the city of Knoxville, Tennessee, the first day of June, Anno Domini, One Thousand, Eight Hundred and Seventy.

President.

{ L. S. }

86 *Secretary.*

And the coupons annexed to which bonds are in the following form :

$35.00. $35.00.

No. The East Tennessee, Virginia and Georgia Railroad Company will pay the Bearer, in the city of New York, thirty-five dollars in lawful money of the United States, on the first day of for semi-annual interest on bond

87 No.

Secretary.

FORM OF CERTIFICATE OF TRUSTEES.

We certify that this Bond is one of a series not exceeding three million, five hundred thousand dollars, described in and secured by the deed of trust or mortgage mentioned herein, bearing date, first of June, Anno Domini, One Thousand Eight

88 Hundred and Seventy, which is duly recorded.

NOW THEREFORE, THIS INDENTURE WITNESSETH, That for the purposes of securing and making more sure and certain the payment of the sums of money mentioned and provided for in the bonds bearing even date herewith, and each and every one of them, with the interest thereon accruing after actual issue, according to the true intent and meaning thereof, and in consideration of the recited premises,

the loan of said money and the sum of one dollar to 88
the said first party in hand paid by the parties of
the second part at and before the ensealing and de-
livery hereof, the receipt whereof is hereby ac-
knowledged by the said party of the first part, the
East Tennessee, Virginia and Georgia Railroad
Company, the party of the first part aforesaid, has
*granted, bargained, sold, assigned, transferred
and conveyed*, and by these presents *does grant,
bargain, sell transfer and convey* unto Philo C.
Calhoun, Richard T. Wilson and Adrian Iselin, the 90
parties of the second part aforesaid, their heirs and
assigns forever, and to their successor or successors
in the trust and assigns, all and singular, the estate
and property, real, personal and mixed, and all
fixtures, rights, privileges; franchises, easements,
rights under leases, terms and parts of terms, agree-
ments, covenants and contracts of all and every
kind, held and owned or occupied by the said party
of the first part, including all and singular the Rail-
roads and Railways of said Company from and in- 91
cluding the terminus and depot at Bristol, in the
County of Sullivan, State of Tennessee, and thence
to the City of Chattanooga, in the County of Ham-
ilton, in the State of Tennessee, and including the
line from Cleveland, in the County of Bradley,
State of Tennessee, to the City of Dalton, County,
of Whitfield, State of Georgia.

TOGETHER WITH ALL AND SINGULAR, The lands,
tracks, lines, rails, bridges, ways, rights of way,
and materials, buildings, piers, wharves, erections, 92
fences, walls, fixtures, privileges, franchises, rights
and interests, real estate, personal property, choses
in action, leasehold and other things, of, and be-
longing to said party of the first part, of every
kind, nature and character, in either of the said
States of Tennessee and Georgia; and *all* the tolls,
income, issues and profits, to be had or derived

from the same, or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same, and all railway stations and depots, with all the appurtenances necessary or convenient for the sole, complete and entire use and operation, as well as maintenance of the said roads or railways, owned or leased by said first party; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery, belonging or appertaining to said railroads and railways so owned as aforesaid; (excepting and reserving therefrom so much of the rolling machinery and other personalty as was purchased from the Government of the United States, in part, by the said East Tennessee and Virginia Railroad Company, and in part by the East Tennessee and Georgia Railroad Company, in or about the Autumn of the year eighteen hundred and sixty-five;) and also all improvements or additions, made or to be made, to any or all of said properties, estates, railroads or railways, and their appurtenances, by said party of the first part or by others; also all and every other estate, interest, property or thing, as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation and enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises, or any part or portion thereof; and also all rights and privileges to use the said road-beds, tracks, sidings, turnouts and switches, constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways, or any of them, owned or operated by said first party, as fully and as effectually as the said Company, party of the first part,

is or may be by law entitled to have or acquire. 97
But nothing herein contained shall be held, understood or construed to prevent said party of the first part from selling, hypothecating, or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said Company, or from disposing of, by and with the consent in writing of the parties of the second part, or their successors in the trust, any lands or other property and effects not essential or necessary to be retained for 98
the said roadways, depots or station grounds, nor required for the construction or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock, subscriptions or otherwise, or for other things, provided the said first party shall diligently proceed to apply all such means and proceeds to improving and equiping of said railway and other like necessary purposes thereof; and provided, also, that no default shall have been made, and at the time remain, in the pay- 99
ment of the interest or principal of any of the bonds hereby secured. But even after default in the payment of interest, the Trustees shall have full power, in their discretion, upon the written request of the party of the first part, to convey, by way of release or otherwise, to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings, and no longer required therefor; and shall also have power to convey as aforesaid, on like 100
request, any lands or property which, in the judgment of the Trustees, shall not be necessary for use in connection with said railroad, or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid, on like request, any lands not occupied by the then existing track, which may become disused by reason of

a change of the location of any station-house, depot, shop or other building connected with the said railroad, or any straightening or alteration of the line of the road and such land occupied by the track, and adjacent to such station-house, depot, shop or other buildings, as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track, or depot, or other buildings, as shall have become expedient; and to make and deliver the conveyances necessary to carry the same into effect; provided that any lands which may be acquired for permanent use, in substitution for any so released, shall be conveyed to the Trustees, upon the trusts of these presents; and the Trustees shall also have full power to allow the said party of the first part from time to time to dispose of such portions of the equipments, machinery and implements at any time held and acquired for the use of the said railroad as may have become unfit for use.

To Have and to Hold the said estate, property, rights, privileges, franchises and interest above conveyed or transferred or intended so to be, together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereto, unto the said Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, parties of the second part, and their successors and assigns, on the trusts, and for the uses and purposes herein declared and none other.

And it is hereby declared that the said bonds for three million, five hundred thousand dollars hereby secured, are to be issued under and in pursuance of

and in accordance with the provisions of the Act of 105
Legislature of the State of Tennessee, entitled "an Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25th, 1869, and the Acts amendatory thereof, and are to to be certified by the Comptroller of the State of Tennessee, either by himself or an agent in New York, and registered in a book kept for that purpose, as provided by the second section of said Act of February 25th, 1869, and that the said bonds hereby 106
secured are to be issued only as fast as permitted by said Act of February 25th, 1869, that is to say, in amounts from time to time equal to the payments made by the said company to the State of Tennessee, on account of the company's indebtedness to the State for its bonds issued in aid of said railroads by surrender of State bonds in discharge of such indebtedness as permitted by said Acts, and that such bonds hereby secured, which shall be so from time to time issued, before the entire discharge of the 107
company's said debt to the State, are to be a lien *pro rata* in amount and of equal validity and effect with the unretired part of the said State indebtedness upon the said railroads, property, franchises and other things hereby mortgaged, as by said Act is provided.

PROVIDED ALWAYS that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly 108
pay or cause to be paid to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them after the same shall be issued, the principal sums of money therein respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing at the times and in the way and

manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then and from henceforth this *Indenture* and the estate hereby granted shall cease, determine and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any other act whatsoever. And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the said Philo. C. Calhoun, Richard T. Wilson and Adrian Iselin, their successor and successors in said trust and assigns, that the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof acquired by the said party of the first part, and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them, or their counsel learned in the law, shall be reasonably devised, advised or required; and further, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue of said bonds, to the purposes hereinbefore recited or mentioned as the objects thereof; and further, that the said first party will pay unto the holder or holders of the said bonds respectively, the

said principal sums of money therein respectively 113
mentioned and as expressed therein, and the interest thereon as the same shall become due and payable, and the moneys to the trustees of the Sinking Fund as hereinafter provided ; and it is hereby further covenanted, granted, declared and agreed, that in case of default in payment thereof, either principal, interest money, or sinking fund secured hereby, and the continuance of such default for six months after such default shall first have been made or suffered, the said first party shall and will, on demand 114
made after the expiration of such six months by the parties of the second part, their successors or assigns, trustee or trustees, for the time being, or their agent or agents, duly authorized in writing. assign and transfer in due form to them or to their agent or agents, so authorized, the actual possession of all the herein granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said 115
property and premises if possession is taken, shall be paid from the income, and if necessary, from the sale of the property and premises, by the said trustee or trustees, as the case may be, for the time being ; and further, that in such case, the parties of the second part, their successors in said trust and assigns, shall and may, by themselves or their officers and agents, take and receive, collect and have the income and profits of the said railways and other property, first applying the same to the pay- 116
ment and discharge of all current necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges ; and next to the payment of all sums of money due and payable upon the aforesaid bonds, issued by said first party, and hereby secured according to the tenor thereof ; and further, that

the said parties of the second part, their successors in said trust, or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby conveyed, or without having entered into such possession (the said default still continuing) at his or their discretion, and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts, in the State of Tennessee, *may*, or on the written request of the holders of at least one-third of the bonds hereby secured, and then outstanding unpaid, *shall* proçeed to sell and dispose of, or cause to be sold and disposed of, all of the premises, property rights, interests, franchises and estate hereby conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all of such of said bonds hereby secured and then outstanding as may have been issued by said first party, together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in the City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation, in each of the said cities, and wherever else the trustees may deem expedient or required by law, for the period of at least ninety days previous to such sale ; and as the attorney or attorneys of the said first party, for that purpose by these presents, duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to said purchaser or purchasers all such estate, right, property, franchises and interest, and to the

same extent as the said first party had therein at 121
the date hereof, or at any time subsequent, and also
a good and sufficient transfer and assignment of
said personal property, choses in action, contracts
and leases.

And out of the moneys arising from such sale or sales, it shall be lawful for and the duty of such Trustees, after first retaining the costs and charges of advertisement, and of the said sale of the premises, and all other sums of money which said trustees, or their successors in said trust, may have 122
been obliged to pay, by reason of their taking possession of, and operating said premises, and a reasonable allowance for their own services, and for legal professional advice, aid and assistance, in effecting and consummating said possession, operation and sale; and also to pay, in so far as such proceeds shall suffice therefor, the principal and interest, whether then due or yet to become due, which shall then remain unpaid on said bonds remaining issued and outstanding, and hereby secured 123
as aforesaid, for the benefit of, and to be paid to the holders thereof, and then restore the residue of the said proceeds, if any there be, to the said party of the first part; it being hereby expressly understood that the bonds issued by said first party, and secured by these presents, shall be ratably receivable, if desired by the holders thereof, in payment of said sale by said trustees or their successors, to the extent of the amount of the net proceeds of such sale properly applicable to the 124
payment of such bonds respectively; and the said sale, when fully consummated, shall be a perpetual bar, both in law and equity, against the said party of the first part, and all persons claiming or to claim the premises, or any part thereof, by, through or under said party of the first part, subsequent to the date of these presents; *and in no*

125 *case* shall any claim or advantage to be taken of any valuation, appraisement or extension laws by the party of the first part, nor any injunction or stay of lawful proceedings hereon, nor shall any process be applied for or obtained by the said party of the first part to prevent or obstruct such lawful entry or sale as aforesaid, but the same are hereby expressly waived by the said party of the first part.

The party of the first part further agrees that at the expiration of two years from the date hereof
126 and every twelve months thereafter, an amount of money derived from the net earnings of said road, equal to one per cent. on the amount of bonds issued and outstanding under provisions hereof shall be set apart as a sinking fund for the redemption of the bonds secured by these presents, and it shall be the duty of the party of the first part to invest the said sinking fund and the interest accruing thereon in the bonds herein secured, at a rate not exceeding ten per cent. above par and accrued interest. And
127 the bonds so purchased shall be immediately registered, stamped or endorsed as irrevocably belonging to said sinking fund, and not further transferable, and said bonds and coupons when stamped, registered and assigned to said sinking fund, shall remain in force only for the purposes thereof, and shall by said stamping, transferring or registering, become void and cancelled thereafter for all other purposes. In case the bonds herein secured cannot be purchased as above within three months after
128 maturity and payment of money for account of the sinking fund, then shall such other good securities, as the parties hereto may agree upon, be purchased, and assigned to said sinking fund, and all shall be held deposited with such depository and in manner as the parties hereto shall from time to time mutually agree upon, and the interest accruing on the sinking fund shall be collected by the party of the first part and invested as hereinbefore provided.

AND THIS INDENTURE further witnesseth, that 129
these presents and the said bonds hereby secured or intended so to be, are made, executed and issued or delivered, upon the terms, conditions and agreements following, that is to say:

First. That the actual possession, use, management and control of all the hereinbefore granted estate, property and premises, shall be, and remain in and with the said party of the first part, so long as the bonds so issued shall be and remain without 130
forfeiture or default in respect of interest or otherwise.

Second. That in the case of any vacancy in the said trusteeship hereunder, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and control, shall be thereupon divested, and cease and determine, but without destroying, or without any discontinuance of the trust: and the said party of the first part *shall*, or upon default 131
or omission to take proceedings therefor for thirty days after notice of such vacancy or incapacity, the holders of not less than thirty-three and one-third per centum in amount of said bonds hereby secured, *may* apply to any of the Courts having jurisdiction in the premises, in the State of Tennessee, to appoint a new Trustee or Trustees to supply the vacancy; and such proceedings may be had, and appointments made, as often as the like occasion may require the appointment of a Trustee to execute the 132
trust herein declared; and when so appointed, such new Trustee shall thereupon become vested for the purposes of the said trust, with all the estate, rights, interests, power, property and control, hereby conveyed or granted to, or vested in the said Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, by these presents, without any further as-

surance, grant or conveyance of the same as fully and effectually as if such appointment had been originally made herein. But if the same shall be necessary, both the said party of the first part, and such new Trustee, or either of them, shall make, execute and deliver all necessary conveyance and agreements, and grants and powers, and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or successors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligencies of any agent or agents, necessarily employed by them, when such agent or agents are selected with proper discretion or with the approbation of the said party of the first part. And the officers of the said Railroad Company shall have at all times the right to inspect the books kept by the receivers of the road and their agents.

And This Indenture further witnesseth that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part, to execute the same upon the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon, by both of the parties to these presents, and that the said trustees and their successors may employ and advise with legal counsel, and that the expense thereof, as well as other personal expenses of the said Trustees, for the time being, in the discharge of said trusts, and all other, their reasonable and proper charges and expenses thereof, including their compensation, shall be paid by the party of the first part, as they are incurred,

or otherwise out of the trust, estate or income on 137
which or to which they are chargeable; and likewise that the said trustees or their successors shall not be required to act in the execution of said trusts, except at their own option, unless the party requesting so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur, or be at in so doing; and that when called upon to act they shall be, and are hereby authorized and invested with full power, at their option, under advice of legal counsel, to submit all 138
questions of law or fact arising in the execution thereof to arbitrators; that they, in the execution of said trusts, may employ agents and attorneys in fact to act in their behalf, whenever required to act as aforesaid, except when they may be or are required by law to act personally; and also, that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said Courts of competent jurisdiction as practised by them in like cases of trusts. 139

It is fully understood that any two of the three Trustees aforesaid, or their successors, shall be sufficient for carrying into effect the purposes of this trust.

IN TESTIMONY WHEREOF the said party of the first part, in pursuance of authority, given by law, and in conformity with the order of the Board of Directors, has caused this INDENTURE to be signed by its President, or Vice- 140
President, and , Secretary, and the Corporate Seal of the Company affixed thereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year first in this INDENTURE mentioned.

141 EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD CO.,
BY THOS. H. CALLAWAY, [SEAL.]
President.
JAMES G. MITCHELL, [SEAL.]
Secretary.

W. C. HENNEGAR,
his
TOLBERT × HAMILTON.
mark.

142 P. C. CALHOUN, [SEAL.]
R. T. WILSON, [SEAL.]
ADRIAN ISELIN, [SEAL.]
Trustees.

F. E. LATHROP,
CHARLES NETTLETON,
As to P. C. C., R. T. W. and A. Iselin.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } SS.:

143 Be it remembered that on this 1st day of June, A. D. 1870, before me, Charles Nettleton, a Commissioner resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Tennessee, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, parties to the foregoing deed, with each of
144 whom I am personally acquainted, who severally acknowledged that they executed the said deed for the purposes therein mentioned as Trustees therein described.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK. } ss.: 145

Be it remembered that on this 1st day of June, A. D. 1870, before me, Charles Nettleton, a Commissioner resident in the City of New York, duly commissioned and qualified by the executive authority and under the laws of the State of Georgia, to take the acknowledgment of deeds, etc., to be used or recorded therein, personally appeared Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, to me personally known to be the individuals named 146 in and who executed the foregoing deed, who severally acknowledged that they executed the same for the purpose therein named and mentioned as Trustees therein described.

GIVEN under my hand and official seal,
this 1st day of June, A. D. 1870.

[SEAL.] CHARLES NETTLETON,
Commissioner for Georgia in New York,
117 Broadway, New York City. 147

STATE OF TENNESSEE, }
KNOX COUNTY. }

On this, the 8th day of May, 1871, before me, J. L. A. Blany, Clerk of the County Court, in and for the County and State aforesaid, personally appeared J. G. Mitchell, to me personally known and to me known to be Secretary of "The East Tennessee, Virginia and Georgia Railroad Company," and 148 being by me duly sworn, did depose and say, that he is now, and was at the time the foregoing Deed in Trust was executed, Secretary of said Corporation, and that Thomas H. Callaway was at that time its President; that they executed said Deed for the purposes in said Deed set forth and expressed for and in behalf of said Corporation, subscribed their

149 names as Secretary and President, and affixed the seal of said Corporation thereto, by authority of said Corporation; and at the same time Wm. C. Hennegar and Tolbert Hamilton, personally known to me to be the subscribing witnesses to said Deed appeared before me, and being duly sworn, severally deposed and said, that they were well acquainted with the aforesaid J. G. Mitchell and Thomas H. Callaway, and knew that they were Secretary and President of "The East Tennessee, Virginia and
150 Georgia Railroad Company," and that they executed the foregoing Deed in Trust in the manner hereinbefore stated, and delivered the same as the Act and Deed of said Corporation for the purposes in said Deed set forth and expressed, on the day it bears date.

WITNESS my hand and Official Seal of
[SEAL.] office, at office in Knoxville, the 8th day of May, 1871.

151 J. L. A. BLANY, *Clerk.*

STATE OF TENNESSEE, }
Sullivan County. }

I, OWEN M. WHITE, Register for said County, do hereby certify that I received and re-registered the foregoing Mortgage or Deed of Trust, and the certificates thereto attached on the 12th day of May, 1871, at 7 o'clock A. M., and the same is entered in Note Book No. 2, page
152 75, and re-registered in Book Volume 23, commencing on page 99.

Given under my hand, at office at Blountville, 12th day of May, 1871.

O. M. WHITE, *Register.*

The foregoing Deed of Trust or Mortgage came to hand on the 12th day of May, 1871, at 3 o'clock

P. M., and was duly re-registered in Book "R," 153
page 19, in the Register's Office of Carter County, Tennessee.

A. L. HILTON, *Register.*

By WM. R. FITZSIMMONS, D. R.

STATE OF TENNESSEE,
Greene County.

Register's Office, May 13, 1871, 10 o'clock, A. M. 154
Then was the foregoing Mortgage or Deed of Trust received for registration and duly re-registered in Book No. 38, commencing on page 1, and noted in Book No. 3, page 20.

Given under my hand, at office in Greenville, Tennessee, this 13th day of May, 1871.

THOS. LANE, *R. G. C.*

155

STATE OF TENNESSEE,
Washington County.

Register's Office, May 13, 1871, 6 o'clock, P. M. Then was the foregoing Instrument or Mortgage received for registration and re-registered in Vol. 42, page 537 and following pages, and entered in Note Book "C," page 28.

Given under my hand, at office at Jonesboro, this day.

156

J. W. C. DEAKE, *Deputy County Register.*

STATE OF TENNESSEE,
Hamblen County.

I, L. B. SMITH, Register of the County aforesaid, do hereby certify that the foregoing Instrument or

157 Mortgage was received in my office for registration, at 10 hr. 30 min., A. M., May 15, 1871, and duly registered in Deed Book No. 1, page 86.

L. B. SMITH, *Register*.

STATE OF TENNESSEE,
Hawkins County.

Register's Office, May 16, 1871, at 8 o'clock, A. M. Then this Deed of Trust, with the Clerk's
158 Certificate, was received and re-registered in Book "B," commencing on page 512, etc.

JOHN WALKER,
Register for Hawkins County.

ROGERSVILLE, May 16, 1871.

STATE OF TENNESSEE,
McMinn County.

159 12:10 P. M., May 18, 1871. Then was the foregoing Mortgage Deed received and noted in Note Book "B," and registered in my office in Book "P," pages 507, etc.

WM. C. DAVIS, *Register*.

STATE OF TENNESSEE,
Hamilton County.

Register's Office, the 18th day of May, 1871, at 8
160 o'clock, P. M. Then was the foregoing Instrument and Certificates received for registration, and is now of record in Book "U," pages 400 and following.

Witness my hand, at office in Chattanooga, the day and date last above written.

JOHN F. HAMILL, *Register*.

Per J. E. DEARING, D. R.

STATE OF TENNESSEE, }
James County. } 161

Register's Office, the 19th day of May, 1871, at 5:20 o'clock, A. M. Then was the foregoing Instrument of Mortgage and the Certificates of Probate received for registration, and is now of record in Book No. 1, commencing on page 5 and following.

Witness my hand, at office at Ooltewah, Tenn., the day and date last above written. 162

JOHN G. RUSTON, *Register.*

STATE OF GEORGIA, }
Whitfield County. }

Clerk's Office, Superior Court, Whitfield county, May 19th, 1871, 10 o'clock, A. M. This was the foregoing Instrument of Mortgage and the Certificates of Probate received for registration, and is now of record on page 1 in Book "G" of this office, and re-registered for supposed insufficiency of 163 probate, on page 153 in Book "G," and following.

Witness my hand, at office this day and date above written.

H. C. HAMILTON, *Clerk D. C. W. C.*

STATE OF TENNESSEE, }
Loudon County. }

The foregoing Mortgage Deed, together with the Certificates of Probate thereto, are duly noted in 164 the Register's office for Loudon county, in Note Book "A," page 11, at 7 o'clock, P. M., May 19th, 1871, and registered in Record Book "A," commencing on page 72 and following, same day.

Given at office, in Loudon, this May 19th, 1871.

FRANCIS BEALS, *Register for Loudon Co.*

165 STATE OF TENNESSEE, }
Roane County. }

Register's Office, May 20th, 1871, 8 o'clock, A. M. Then was the foregoing Instrument of Mortgage received for registration, and noted in Note Book "A," page 107, and with the Certificates of Probate thereon registered in my office in Book "R," commencing on page 255.

Given under my hand, at office at Kingston, date last above written.

166 J. C. CLARK, *Register for Roane Co.*

STATE OF TENNESSEE, }
Jefferson County. }

Register's office, May 24, 1871. Then was the within Mortgage and Clerk's Certificate of Probate recorded in Deed Trust Book No. 1, on page 193, which came to hand May 24, 1871, at 4 o'clock, P. M.

167 Given under my hand, at office in Dandridge, the day and date above written.

W. M. HILL, *Register for Jefferson Co.*

STATE OF TENNESSEE, }
Granger County. }

Register's office, May 25, 1871. Then was the within Instrument and Certificate of Probate recorded in Note Book "A," page 146, at 7 o'clock, P.
168 M., and registered in Trust Book No. 1, commencing on page 76.

Given under my hand, at office in Rutledge, the 25th day of May, 1871.

HENRY SHEPERD, *Register of Granger Co.*

STATE OF TENNESSEE, }
Knox County. } 169

I, CHARLES MORROW, Register of Knox county, do hereby certify that the foregoing Mortgage was received at my office, at 8 o'clock, A. M., May 27, 1871, and registered in Mortgage Book "A," commencing on page 508.

Witness my hand, at office in Knoxville, this 27th May, 1871.

CHARLES MORROW, *Register for Knox Co.* 170

STATE OF TENNESSEE, }
Monroe County. }

I, E. D. MALONE, Register of Monroe county, do hereby certify that the foregoing Mortgage was received at my office, at 7 o'clock, P. M., May 29, 1871, and registered in Book "A," for Trust Deeds, commencing on page 190.

Witness my hand, at office in Madisonville, day and date last above written. 171

E. D. MALONE, *Register.*

STATE OF TENNESSEE, }
Bradley County. }

I certify that the foregoing Mortgage was received this day at 6 o'clock, P M., and noted in Book "A," page 64, and with the Clerk's Certificate, is duly noted for registration in my office, in Book "B," pages 139–40, etc. 172

JOSEPH W. HICKS, *County Register.*

May 30, 1871.

173 RESPONDENT'S EXHIBIT No. 2.
W. H. D. L.. Sp'l Ex'r.

KNOXVILLE & OHIO RAILROAD.

Copy of Mortgage or Deed of Trust.

This indenture made on this, the first day of January, 1876, between the Knoxville & Ohio Railroad
174 Company, a corporation created, organized and operated under and in pursuance of the laws of the State of Tennessee, and herein designated party of the first part, and R. T. Wilson, of New York City, in the State of New York, and W. T. Walters, of the city of Baltimore, in the State of Maryland, and herein designated parties of the second part, witnesseth, that, whereas, at a general meeting of the stockholders of said Knoxville & Ohio Railroad Company, duly and regularly convened on the 24th
175 day of September, 1875, and by several adjournments continued till the 11th of November, ensuing, it was resolved that the directors shall forthwith prepare and cause to be issued, coupon bonds bearing seven per cent. (7%) interest payable semi-annually, and payable to bearer, to the amount of ($500,000) five hundred thousand dollars, and secure the same by mortgage or deed of trust upon all the property and franchises of the company, with such conditions and provisions as the Board of Directors
176 shall deem proper and judicious; and whereas said board of directors, in the execution of the duty enjoined upon it by said resolution, have issued one thousand bonds for ($500), five hundred dollars each, bearing even date with these presents and falling due thirty years after date, with coupons attached; bearing interest at seven per cent (7%) per annum, payable semi-annually, on the first days of

January and July, in each and every year, in the 177
city of New York, subject to be called in and paid at any time at the option of the party of the first part, after thirty days notice to be given, as stipulated in said bonds, to be put upon the market and sold in the manner and for the purposes expressed in said resolution, the payment whereof the party of the first part is desirous of securing; and which said one thousand bonds, bearing date as aforesaid, are of like tenor and in the form following, to-wit:

178

No. $500.00.

UNITED STATES OF AMERICA.

THE KNOXVILLE & OHIO RAILROAD COMPANY.

First Mortgage Bond.

The Knoxville & Ohio Railroad Company, for value received, promises to pay the bearer hereof, on the 1st day of January, one thousand nine hundred and six, five hundred dollars, lawful money 179
of the United States, in the city of New York, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like lawful money, in the city of New York, semi-annually, on the first days of January and July of each year, on presentation and surrender of the annexed interest warrants. This bond is one of a series numbered from one to one thousand inclusive, for five hundred dollars each, amounting in the aggregate to five hundred thousand dollars, issued of this date, and 180
which are secured by a Deed of Trust or Mortgage bearing even date herewith, conveying in trust unto William T. Walters, of Baltimore, Maryland, and Richard T. Wilson, of the city and State of New York, all the property and franchise of said Knoxville & Ohio Railroad Company; and upon default in the interest payments hereon, this bond becomes

181 due and payable, as defined in said mortgage, or Deed of Trust. It is understood and agreed by the holder of this bond that the said Knoxville & Ohio Railroad Company, has the privilege of paying the same and accrued interest at any time before maturity, by giving notice of their wish to do so for thirty days in one newspaper each in New York City, and Knoxville, Tennessee, and that interest on this bond will cease at the end of said thirty days' notice.

182 In witness whereof the said Company has hereunto affixed its corporate seal and caused this bond to be signed by its President and Treasurer, this first day of January, 1876.

President.

Treasurer.

183 And the coupons annexed to which bonds are in the following form :

$17.50. $17.50.

The Knoxville & Ohio Railroad Company, will pay to the bearer in the City of New York, seventeen $\frac{50}{100}$ dollars in lawful money of the United States, on the first day of for semi-annual interest on bond No.

184 *Treasurer.*

Which coupons are to be issued with the lithographed signature of the Treasurer of said Company, and, when thus issued by said company, are to be as binding upon it as if such signature were written by the Treasurer.

Form of Trustees' Certificate. 185

We hereby certify that this is one of the bonds issued under the deed of trust or mortgage therein referred to.

Trustees.

Now, therefore, this indenture witnesseth that, for the purpose of securing and making certain the payment of the sums of money mentioned and provided for in the said one thousand bonds, and each 186
and every one of them, with the interest accruing thereon, after the same shall be sold according to the true intent and meaning thereof, and in consideration of the recited premises, the purchase money to be paid therefor, and the sum of one dollar to the said first party in hand paid by the parties of the second part at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged by the said party of the first part, the said Knoxville and Ohio Railroad Company, the party of 187
the first part aforesaid, hath granted, bargained, sold, assigned, transferred and conveyed, and by these presents doth grant, bargain, sell, assign, transfer and convey unto the said R. T. Wilson and W. T. Walters, the aforesaid parties of the second part, as joint tenants and not as tenants in common, and the survivor of them, their heirs and assigns forever, and to their successor or successors, all and singular the estate and property, real, personal and mixed, and [all privileges, rights, franchises, easements, 188
rights under leases, terms and parts of terms, agreements, covenants and contracts, of all and every kind, held and owned or occupied by the said party of the first part, including all and singular the railroads and railways of said Company, from and including the terminus and depot at Knoxville, in the County of Knox and State of Tennessee, and thence

to Careyville, in Campbell County in said State, together with all and singular the lands, tracts, lines, rails, bridges, ways, rights-of-way and materials, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, franchises, rights and interests, real estate, personal property, choses in action, leasehold and other things of and belonging to said party of the first part of every kind, nature and character; and all the tolls, income, issues and profits to be had or divided from the same or any part or portion thereof, or from any part or portion of said term or terms, or either thereof; and all right to receive or recover the same; and all railway stations or depots with all the appurtenances necessary or convenient for the sole, complete, and entire use and operation as well as maintenance of said road; and also all the locomotives, engines, tenders, cars, carriages, tools and machinery belonging or appertaining to said railroad or railway; and also all improvements or additions made or to be made to any or all of said properties, estates, railroads or railways and their appurtenances by said party of the first part or by others, and all and every estate, interest, property or thing as well real or mixed as personal, which the said party of the first part own and hold, or may and shall hereafter acquire and hold, necessary or convenient for the use, occupation, operation or enjoyment of all or any of its said railroads, railways, leases and property, rights, privileges and franchises or any part or portion thereof; and also all rights and privileges to use the said road-beds, sidings, tracks, turnouts and switches constructed at the execution of these presents, or which may or shall be hereafter constructed for the convenient use of said railroads or railways or any of them, owned or operated by said first party, as fully and effectually as the said company, party of the first

part, is or may be by law entitled to acquire or have. 193
But nothing shall herein be held, understood or construed to prevent said party of the first part from selling, hypothecating or otherwise disposing of any money or securities received in payment of shares of capital stock, or from proceeds of any debts or claims now due to said company, or from disposing of by and with the consent in writing of the parties of the second part, or successors in the trust, any land or other property and effects not essential or necessary to be retained for the said road-way, depots or station 194
grounds nor required for the construction or convenient use of the said railways, nor from selling shares, nor from collecting moneys due on capital stock subscriptions or otherwise, or for other things, provided the said first party shall diligently proceed to apply all such means and proceeds to improving and equipping said railway and other like purposes thereof, and provided also that no default shall have been made and at the time remain in the payment of the interest or principal on any of 195
the bonds hereby secured. But even after default in payment of interest the trustees shall have full power in their discretion, upon the written request of the party of the first part, to convey by way of release or otherwise to the persons designated by the said party of the first part, any lands acquired or held for the purposes of stations, depots, shops or other buildings and no longer required therefor, and shall also have power to convey as aforesaid on like request any bonds or property, which, in the judg- 196
ment of the trustees shall not be necessary for use in connection with said railroad or which may have been held for a supply of fuel, gravel or other material, and also to convey as aforesaid on like request any lands not occupied by the then existing track which may become disused by reason of a change of the location of any station house, de-

pot, shop, or other building connected with the said railroad or any straightening or alteration of the lines of the road, and such land occupied by the track and adjacent to such station-house, depot, shop, or other buildings as the said party of the first part may deem it expedient to disuse or abandon by reason of such change, and consent to any such change and to such other changes in the location of the track, or depot, or other buildings, as shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; provided that any lands that may be acquired for permanent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents. And the trustees shall also have full power to allow the said party of the first part from time to time to dispose of such portions of the equipments, machinery and improvements at any time held or acquired for the use of said railroad as may have become unfit for such use. To have and to hold the estate, property, rights, privileges, franchises and interests above conveyed or transferred, or intended so to be; together with all and singular the emoluments, income and advantages, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, the said R. T. Wilson and W. T. Walters, parties of the second part, or the survivor of them, and their successors and assigns, on the trust and for the uses and purposes herein declared, and none other; provided always, that these presents are made and executed upon the express condition that if the said party of the first part shall well and truly pay or cause to be paid to the holders of the said bonds or obligations intended to be secured hereby, and each and every of them, after the same

shall be issued, the principal sums of money therein 201
respectively mentioned, at the maturity thereof, according to their true intent and meaning, with the interest thereon accruing, at the times and in the way and manner therein, and in the coupons provided, according to the true intent and meaning of these presents, that then and thenceforth this indenture and the estate hereby granted shall cease, determine, and be utterly void and of none effect, without any other release or formal reconveyance, re-entry, acknowledgment of satisfaction, or any 202
other act whatsoever.

In case default shall be made in the payment of any half year's interest on any of the bonds aforesaid at the time and in the manner in the coupons issued therewith is provided, the said coupon having been presented and the payment of the interest therein specified having been demanded, and that such default shall continue for the period of six months after the said coupon shall have become due, then and thereupon the principal of all the 203
said bonds shall at the election of the trustees become due and payable, or a majority in interest of the holders of said bonds may by an instrument in writing under their hands and seals instruct the said trustees to declare the principal of said bonds to be due, or waive the right so to declare, on such terms and conditions as such majority in interest shall deem proper, or may annul or reverse the election of the trustees; provided that no action of the trustees or of the bondholders shall extend to 204
or be taken to affect any subsequent default or impair the rights resulting therefrom.

And the said party of the first part, in consideration of the premises, hereby covenants and agrees to and with the said R. T. Wilson and W. T. Walters, and the survivor of them, their successor and successors in the said trust, and assigns, that

the said first party will at any time or times hereafter, upon the reasonable request of the said parties of the second part, their successors or assigns, execute and deliver, or cause to be executed and delivered, all and every such further and other reasonable deeds, conveyances, assignments and assurances in the law for the better and more effectual vesting and confirming the premises, property, rights and interests hereby granted or intended so to be, and especially for conveying any property subsequently to the date hereof, acquired by the said party of the first part and comprehended in the description contained in this indenture, if any such there be, to the said parties of the second part as Trustees for the uses and purposes of this indenture, and to their successors and assigns, as by them or their counsel learned in the law shall be reasonably devised, advised or required.

And first, that the said first party will do and perform all the things on the part of the said first party to be done and performed as hereinbefore set forth, and faithfully apply all the money and other things arising from the issue and sale of said bonds to the purposes hereinbefore recited or mentioned as the objects thereof, and further, that the said first party will pay unto the holder or holders of the said bonds respectively the said principal sums of money therein respectively mentioned and as expressed therein, and the interest thereon as the same shall become due and payable. And it is hereby provided, declared and agreed that no bond shall be deemed to be issued under this mortgage or entitled to the benefit of the security thereby provided unless there shall be endorsed thereon a certificate signed by the Trustees for the time being to the effect that the same is issued under the said mortgage.

And it is hereby further covenanted, de- 209
clared and agreed that in case of default in payment thereof, either principal or interest money secured hereby, and the continuance of such default for six months after such default shall have been made or suffered, the said first party shall and will, on demand made after the expiration of such six months by the parties of the second part, their successors or assigns, trustee or trustees for the time being, or their agent or agents duly authorized in writing, assign and transfer in due form to them, 210
or to their agent or agents so authorized, the actual possession of all the herein-granted and conveyed property and premises, and herein recited and mentioned, or intended to be embraced in this trust; and further, that the expense of taking, holding and managing said property and premises, if possession be taken, shall be paid from the income, and, if necessary, from the sale of the property and premises by the said trustee or trustees, as the case may be, for the time being; and further, that in 211
such case the parties of the second part, or the survivor of them, or their successors in said trusts and assigns, shall and may by themselves, or by their officers and agents, take and receive, collect and have, the income and profits of the said railways and other property, first applying the same to the payment and discharge of all current and necessary operating expenses and repairs, including the expenses hereinbefore mentioned, and all taxes and other similar charges, and next to the 212
payment of all sums of money due and payable upon the aforesaid bonds issued by said first party and hereby secured according to the tenor thereof; and further that the said parties of the second part, their successors in said trust or assigns, having entered as hereinbefore mentioned, into the full possession of the premises, property and estate hereby

conveyed or without having entered into such possession (the said default still continuing), at his or their discretion and with the approbation of such Court or Courts of Record, either State or Federal, as may have jurisdiction over like trusts in the State of Tennessee, may, or on the written request of the holders of at least one half of the bonds hereby secured and then outstanding unpaid shall, proceed to sell and dispose of or cause to be sold and disposed of, all the premises, property, rights, interests, franchises and estate, hereby conveyed or intended to be conveyed, or so much thereof as shall be necessary to pay and discharge the principal and interest according to the tenor thereof, of all such of said bonds hereby secured and then outstanding as may have been issued by said first party together with all benefit and equity of redemption of said party of the first part therein, by public auction, either in the City of Knoxville, Tennessee, or in City of New York, to the highest bidder, having previously given public notice of the time, place and terms of said sale, and of the property to be sold, by publishing the same in at least two newspapers of good general circulation in each of the said cities, and wherever else the Trustees may deem expedient or required by law, for a period of ninety days previous to such sale. And, as the attorney or attorneys of the said first party for that purpose by these presents duly constituted and appointed, make, execute and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, granting and assuring to the said purchaser or purchasers all such estate, right, property, franchise and interest, and to the same extent as the said first party had therein at the date hereof or at any time subsequent, and also a good and sufficient transfer and assignment of said personal property, choses in action,

contracts and leases. And out of the moneys 217
arising from such sale or sales it shall be lawful for and the duty of said Trustees, after first retaining the costs and charges of advertisement and of the said sale of the premises and all other sums of money which said Trustees or their successors in said trust may have been obliged to pay by reason of their taking possession of and operating said premises, and a reasonable allowance for their own services and for legal professional advice, aid and assistance in effecting and consummating said pos- 218
session, operation and sale. And also to pay, in so far as such proceeds shall suffice therefor, the principal and interest whether then due or yet to become due, which shall then remain unpaid on said bonds remaining issued and outstanding and hereby secured as aforesaid, for the benefit of and to be paid to the holders thereof and then restore the residue of the said proceeds, if any there be, to the said party of the first part; it being hereby expressly understood that the bonds issued by the said first party and se- 219
cured by these presents shall be rateably receivable, if desired by the holders thereof, in payment of said sale by said trustees, or their successors, to the amount of the net proceeds of such sale properly applicable to the payment of such bonds respectively; and the said sale when fully consumated, shall be a perpetual bar, both in law and equity, against the said party of the first part, and all persons claiming or to claim the premises, or any part thereof, by, through or under said party of the first 220
part subsequent to the date of these presents; and in no case shall any claim or advantage be taken of any valuation, appraisement or extension laws by the party of the first part nor any injunction or stay of lawful proceedings hereon, nor shall any process be applied for or obtained by the party of the first part to prevent or obstruct such lawful entry or

221 sale as aforesaid, but the same are hereby expressly waived by the said party of the first part.

And this indenture further witnesseth that these presents and the said bonds hereby secured or intended so to be, are made, extended and issued or delivered upon the terms, conditions and agreements following, that is to say:

First, that the actual possession, use, management and control of all the hereinbefore granted estate, property and premises shall be and remain
222 in and with the said party of the first part so long as the bonds so issued shall be and remain without forfeiture or default in respect of interest or otherwise.

Second, that in case of any vacancy in the said trusteeship hereunder, by the incapacity to act, death or resignation of either of the said trustees, or from any other cause, all his estate, right, interest, power and control shall be thereupon divested and cease and determine, but without destroying or
223 without any discontinuance of the trust, and the said party of the first part shall, or upon default or omission to take proceedings therefor for thirty days after notice of such vacancy or incapacity, the holders of not less than ten per centum in amount of the said bonds hereby secured, may apply to any of the Courts having jurisdiction in the premises in the State of Tennessee to appoint a new trustee to supply the vacancy, and such proceedings may be had and appointments made as often as the like
224 occasion may require the appointment of a trustee to execute the trust herein declared, and when so appointed such new trustee shall thereupon become vested, for the purposes of said trust, with all the rights, estate, interests, power, property and control hereby conveyed or granted to or vested in the said R. T. Wilson and W. T. Walters by these pre-

sents, without any further assurance, grant or con- 225
veyance of the same, as fully and effectually as if such appointment had been originally made therein. But, if the same shall be necessary, both the said party of the first part and such new trustee, or either of them, shall make, execute and deliver all necessary conveyances and agreements and grants and powers and authorities for that purpose.

And it is further understood and agreed by and between the parties to these presents, that the said parties of the second part, their successor or suc- 226
cessors in said trust, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or negligence of any agent or agents necessarily employed by them, when such agent or agents are selected with proper discretion, or with the approbation of the said party of the first part, and the officers of the said railroad company shall have at all times the right to inspect the books kept by the Receivers of the road and their agents. 227

And this Indenture further witnesseth, that the said parties of the second part hereby accept the aforesaid trusts, and also covenant and agree to and with the said party of the first part to execute the same upon the terms and conditions hereinbefore as well as hereinafter mentioned and provided, and which said terms and conditions are hereby mutually agreed to and upon by both of the parties to these presents, and that the said Trustees and their successors may employ and advise with legal coun- 228
sel, and that the expense thereof, as well as other personal expenses of the said Trustees for the time being in the discharge of said trusts, and all other their reasonable and proper charges and expenses thereof, including their compensation, shall be paid by the parties of the first part as they are incurred, or otherwise, out of the trust estate or income on which or to which they are chargeable; and like-

wise that the said Trustees or their successors shall not be required to act in the execution of said trusts, except at their own option, unless the party requesting them so to do shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing; and that when called upon to act they shall be and are hereby authorized and invested with full power at their option, under advice of legal counsel, to submit all questions of law or fact arising in the execution thereof to arbitrators; that they in the execution of said trusts may employ agents and attorneys in fact to act in their behalf whenever requested to act as aforesaid, except when they may be or are required by law to act personally.

And also that all covenants and agreements hereinbefore contained or implied may be executed specifically by and through any of the said Courts of competent jurisdiction as practised by them in like cases of trusts.

In testimony whereof the said party of the first part, in pursuance of authority given by law, and in comformity with the order of the Board of Directors has caused this indenture to be signed by C. M. McGhee, its President, and John L. Moses, Treasurer, and the Corporate seal of the Company to be affixed hereto, and the parties of the second part have hereunto subscribed their names and affixed their seals the day and year in this indenture first mentioned.

C. M. McGHEE, *President.*
JOHN L. MOSES, *Treasurer.*
R. T. WILSON, W. T. WALTERS } *Trustees.*

Signed, sealed and delivered in presence of
WILLIAM H. CLARKSON, } as to R. T. WILSON and W. T. WALTERS, *Trustees.*
H. W. LYNN, WM. BLAIR, } as to C. M. McGHEE and JOHN L. MOSES.

STATE OF NEW YORK, } ss.:
City and County of New York. }

Personally appeared before me, a Commissioner of the State of Tennessee in and for the State of New York, residing in the City of New York, the foregoing named trustees, Richard T. Wilson and W. T. Walters, with whom I am personally acquainted, who acknowledged that they executed the foregoing Instrument for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 1st day of March, A. D. 1876.

[L. S.] WILLIAM H. CLARKSON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF TENNESSEE, }
Knox County. }

Personally appeared before me, J. F. J. Lewis, Clerk of the County Court of said County, H. W. Lynn and Wm. Blair, subscribing witnesses to the foregoing instrument, who, having first been sworn, deposed and said they were acquainted with C. M. McGhee, President of the Knoxville & Ohio Railroad Company, who signed the foregoing deed, and that he acknowledged in their presence that the instrument was executed for the purposes therein named; also, at the same time, personally appeared before me, John L. Moses, Treasurer of the Knoxville & Ohio Railroad Company, known to me as the individual named in the foregoing deed, who acknowledged that he signed the same for the purposes therein named, that he affixed the seal of the Knoxville & Ohio Railroad Company, and that his signature as Treasurer, the signature of C. M. McGhee as President, and the seal of the Company were affixed under the authority and direction of an order passed by the Board of Directors of said Company, and that said order was passed in pursuance of a resolution adopted by the stockholders of the Company.

Witness, my hand and official seal, at office in Knoxville, this June 7, 1876.

J. F. J. LEWIS,

[L. S] *Clerk.*

STATE OF TENNESSEE,
Knox County.

REGISTER'S OFFICE,
June 7th, 1876, 12 *o'clock M.*

Then was this Deed of Trust registered in my office, in Trust Deed Book "C," vol 1st, pages 358, 359, 360, 361, 362, 363, 364, 365, 366 and 367, and noted in Note Book "A," page 22.

CHARLES MORROW,
Register,
For Knox County, Tennessee.

Fee, $7.25, paid.

STATE OF TENNESSEE,
Anderson County.

I, J. A. Brown, Register for said County, do certify that the Deed of Trust and the Certificate attached, was received for Record on the ninth day of June, A. D. 1876, at nine o'clock A. M., and Registered in Book Z, on pages 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, and noted in Note Book No. 2, on page 137.

J. A. BROWN,
Register,
For Anderson County, Tennessee,
By JOHN ALLEN,
Dept. Register,
For said County.

Fee, $7.50, paid.

STATE OF TENNESSEE,
Campbell County.

REGISTER'S OFFICE,
Jacksonboro, Tenn., June 14th, 1876.

The foregoing instrument with Certificates attached came to hand June 14th, 1876, at 9 o'clock A. M., was noted in Note Book, vol. "1," page 101, and recorded in Book of Trust Deeds, vol. "A," pages 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281 and 282, June 15th, 1876, at 3 o'clock P. M.

D. C. MCAMIS,
Register,
For Campbell County, Tennessee.

Reg. fees, $7.75, paid.

RESPONDENT'S EXHIBIT No. 3. 233

W. H. D. L., *Spl. Exr.*

Statement showing the Railroads which retired their debts to the State of Tennessee, and amount of same, date, &c.:

Names of Railroad.	Original Debt.	Date of payment	How Paid.		
			Bonds.	Coupons.	Cash.
East Tenn., Va & Ga.,.....	3,816,000 00	Aug. 1,1870	3,835,000 00	282,750 00	11 10
Memphis & Charleston, ...	1,700,000 00	July 25, '77	1,648,000 00	88,920 00	
Nashville & Chattanooga....	395,000 00	Jan. 1, '74	364,165 00		
Nashville & Decatur, ...	2,119,000 00	M'ch, 1871	2,393.750 00	407,005 00	32 10 234
Memphis & Ohio,.....	1,999,000 00	May 25, '71	2,146,000 00	322,380 00	
Mobile & Ohio,.....	1,296,000 00	Jan. 1, '72	1,539,000 00	246,245 00	1 00
Mississippi & Tennessee....	398,000 00	Jan. 16, '78	299,000 00	810 00	
Mississippi Central, ...	1,124,000 00	Nov. 28.'77	1,199,000 00		

Statement showing amount of Sinking Fund paid by Railroads since January, 1870:

Name of Railroad..	Bonds.	Coupons.	Currency.	Total.	
Memphis & Charleston, ...	158,000 00	34,465	6 20	198,585 00	235
Nashville & Chattanooga, ...	20,500 00	10,835		31,335 00	
Mississippi & Tennessee,....	115,000 00	2,536		117,536 00	

What Railroads were sold, the amount for which each was sold payable in bonds of the State, with *January*, 1871, *and subsequent coupons* attached (or equivalent) and the amount of bonds, &c., actually paid:

Name of Railroad,	Amount of Sale.	How Paid.			
		Bonds.	Coupons.	Cash.	
Edgefield and Kentucky,....	900,000 00	974,000 00		10,443 96	236
Cin.,Cumb. Gap & Charleston	300,000 00	300,000 00			
Knoxville & Kentucky,.....	350,000 00	343,000 00	7,500 00	20 67	
McMinnville & Manchester,.	300,000 00	300,000 00			
Winchester & Alabama,.....	300,000 00	300,000 00			
Rogersville & Jefferson,.....	23,000 00	23,000 00			
Nashville & North-Western,.	2,400,000 00	2,400,000 00			
Knoxville & Charleston,.....	105,000 00	117,000 00	7,950 00	6,791 25	
E. Tenn. & West. N. Carolina,	20,000 00	21,000 00	50 00	180 00	
Mem.,Clarksville & Lou'ville,	1,700,000 00	1,630,000 00	70,000 00		
Tenn. & Pacific,.....	300,000 00	328,000 00		*10,470 00	

* In litigation.

237 Statement showing the date of first and last payments on account of the roads which were sold out:

Name of Railroad.	Date of first payment.	Date of last payment.
Edgefield & Kentucky, ...	Aug. 26, 1871.	Dec. 23, 1874.
Cin.,Cumb. Gap & Charleston	Oct. 16, 1871.	Sept. 24, 1874.
Tenn. & Pacific, ...	Aug. 8, 1874.	Nov. 29, 1876.
Nashville & North-Western,.	Oct. 10, 1871.	Jan. 1, 1874.
Winchester & Alabama,.....	Aug. 30, 1871.	Dec. 20, 1873.
McMinnville & Manchester,.	April 6, 1870.	July 27, 1870.
Knoxville & Kentucky, ...	Oct. 16, 1871.	Sept. 24, 1874.
238 Rogersville & Jefferson,.....	April 10, 1872.	April 10, 1872.
Knoxville & Charleston,....	April 20, 1872.	Dec. 1, 1878.
E. Tenn. & West. N. Carolina	Nov. 18, 1871.	Nov. 13, 1874.
Mem.,Clarksville & Louisville	March 2, 1871.	May 7, 1872.

RESUME.

Paid in Bonds,.....	13,423,915 00		
" " "	293,500 00		
" " "	6,736,000 00		
			20,453,415 00
" " Coupons	1,348,120 00		
" " "	47,836 00		
" " "	85,500 00		
239			1,481,456 00
" " Cash	44 20		
" " "	6 20		
" " "	27,905 88		
			27,956 28
			21,962,827 28
Debt paid,..			14,772,079 20
Sinking Fund,.....			341,342 20
Roads sold,.....			6,849,405 88
Add, ...			21,962,827 28
Louisville & Nashville Railroad Co.,.....			702,000 00
240			
Paid in 1865–6, ...			22,664,827 28

STATE OF TENNESSEE,
Comptroller's Office.

I, JAS. L. GAINES, Comptroller of the State of Tennessee, do certify that the foregoing statements (on the opposite page) are correct as shown by the books and records of this office.

Witness, etc., this 21st day of October, 1879.

[SEAL.] JAS. L. GAINES,
Comptr.

COMPAINANT'S EXHIBIT No. 1. 241
W. H. D. L., Sp'l Ex.

MOBILE & OHIO

RAILROAD COMPANY.

FIRST MORTGAGE

Seven per Cent. Sinking Fund 242

GOLD BONDS.

$1,000 or £205.

Principal Due, July 1st, 1901.

243

Interest Payable January 1st and July 1st.

Principal and Interest Payable in the City of New York, Coin of the United States of America, or in the City of London, in Sterling, at the Option of the Holder.

RESOLUTIONS 244

OF

Mobile and Ohio Railroad Company.

AT a called meeting of the Board of Directors of the Mobile and Ohio Railroad Company, held 25th

May, 1871, the following preamble and resolutions were unanimously adopted :

Whereas, At sundry times, heretofore, to enable this Corporation to iron, equip and complete its line of railway through the State of Tennessee, said State of Tennessee, under and by virtue of its general Internal Improvement Laws, and of other acts amendatory and supplementary thereto, theretofore passed, and then in full force, loaned to this Company, or has advanced for its benefit, bonds of the said State of Tennessee, to the aggregate sum of one million six hundred and eighty-four thousand eight hundred dollars ($1,684,800).

Whereof payment, both of principal and accruing interest, was to be made by this Company, as the same matured, and for the security of which payments of principal and interest, a lien was reserved to said State upon the entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the Company, as incident to, or necessary for its business; and all depots and depot stations, and all the property and assets attached thereto, or belonging to said Company, lying within the limits of said State, with power to seize, and in default of payment of the principal, to sell in the nature of a mortgage lien, as appears by reference to the said statutes of the State of Tennessee.

And whereas, By Act of the said State of Tennessee, Chapter XXXVIII, passed at the second session of the thirty-fifth General Assembly of the State, entitled, "An Act to liquidate the State Debt contracted in aid of railroad companies in the State of Tennessee," passed Febuary 25th, 1869, it is among other things enacted, that any person

or corporation may, with the consent of the Board 249
of Directors of any railroad company, so having received aid under said General Internal Improvement Law, passed 11th Febuary, 1852, and the amendments thereto, pay off the indebtedness of such railroad company to the said State, in the mode and manner therein provided, and with the consent of such railroad company upon such payment be subrogated to all the lien or liens, which the State of Tennessee had, or has, upon said railroad, or its property, and have the same right to 250
enforce the same, which the State of Tennessee had.

And whereas, This Corporation is desirous to avail itself of the provisions of said law, and return to said State of Tennessee the like amount of bonds of said State, as have heretofore been loaned to it, or advanced for its benefits by an issue of its own bonds, to be exchanged for said State bonds, with the holders thereof, and at the same time to secure to the holders of said substituted bonds in good 251
faith all the protection and security which the said State of Tennessee held for its protection and indemnity against loss and damage, by reason of its said loan to the said Mobile and Ohio Railroad Company, by virtue of the laws of the said State, were no change made in the form of security originally held by said State, according to the true intent and meaning of the Act passed 25th February, 1869.

Therefore be it resolved by the Board of Directors 252
of the Mobile and Ohio Railroad Company as follows:

1st.—The President of this Company is hereby authorized and empowered to cause to be prepared and issued, under the seal of this Company, bonds of this Company to the amount of one million six

hundred and eighty-five thousand dollars ($1,685,000), the same to be signed by the President, or in his absence, by one of the Vice-Presidents, and countersigned by the Secretary and Treasurer, said bonds to be made payable in Gold coin of the United States, in the City of New York, or in the City of London, at the option of the holder; to be each for the sum of one thousand dollars, or two hundred and five Pounds Sterling, and payable on the 1st day of July, A. D. 1901. Said bonds to bear interest at seven per centum per annum, payable semi-annually, on 1st January and July in each year, at New York or London, at the option of the holder, and for which interest, coupons or interest warrants are to be attached to said bonds.

2d.—That Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, their survivors and survivor, are hereby declared the Agents of this Company, to effect the substitution of its said bonds, as above authorized, in place of the said bonds of the State of Tennessee, for the purpose and objects declared in the preamble to these resolutions; and upon and from and after such substitution, as rapidly as the same is effected, the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, their survivors and survivor, and their successors, are hereby declared to be Trustees for the mutual benefit of this Company, and of the holders of said bonds, and are hereby authorized to defend and protect the rights conferred on the holders of said bonds, by the said acts and laws of the said State of Tennessee, and hereby acknowledged and recognized. In case of the death or resignation of any of said Trustees, the vacancy shall be filled by the joint appointment of the remaining Trustees, or Trustee, and the President of the Mobile and Ohio Railroad Company, with the approval of its Board

of Directors; and if all become incapable of acting, 257
new Trustees are to be appointed by this Company.

3d.—This Company does hereby declare that it does and will at all times acknowledge and recognize the bonds herein authorized to be issued, when so substituted in the room and place of the said bonds of the State of Tennessee, in manner herein and by said act provided, as entitled to and in fact being a lien, in the nature of a first mortgage, upon all the property of this Company, in the said State, 258
the same precisely as is now declared to exist in favor of the said State of Tennessee, under and by virtue of the statutes thereof, in pursuance of which the said loan and advance of State bonds was made to the Company.

And this Company does hereby covenant to and with the said Trustees, their survivors and survivor, and successors, that it will in good faith do and perform all things, acts and deeds necessary and proper, and which it may be reasonably requested 259
to do, for the protection of the rights of the holders of said substituted bonds, and of said Trustees for their benefit, according to the true intent and meaning of the said acts and laws of the State of Tennessee, hereinbefore referred to, and of these resolutions; and further, that this Company shall and will, annually hereafter, from and after the 1st day of April, 1873, within three months thereafter, and during each year, while said bonds, herein authorized, are running to maturity, provide and set 260
apart from the earnings of the Company a fund of at least one per centum of the amount of said bonds, and will annually faithfully apply said sum of money, so set apart, as a sinking fund to the purchase and gradual retirement of said bonds; and on, or by the 1st day of April, 1874, and every year thereafter, till said bonds are fully retired, will

261 furnish to said Trustees, evidence of the performance of this stipulation, as may be agreed on.

Resolved, That the President of this Company be, and he is hereby directed, under its corporate seal, to execute and deliver to said Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, as Trustees aforesaid, its deed for the uses and purposes herein declared, and for the effectual protection and security of the holders of the bonds, hereby author-
662 ized to be issued, according to the true intent and meaning of these resolutions.

I certify the foregoing to be a true copy from the minutes of the Board of Directors of the Mobile and Ohio Railroad Company.

Seal of Company.

(Signed,) A. L. WILLOUGHBY,
Sec'y M. & O. R. R. Co.

263 DEED OF TRUST

OF

MOBILE AND OHIO RAILROAD CO.

This indenture, made this first day of July, A. D. 187[illegible], between the Mobile and Ohio Railroad Company, of the first part, Wm. Butler Duncan, Adrian Iselin and Richard T. Wilson, of the City and State of New York, their survivors and survivor, and successors, of the second part, and the holders of the
264 bonds issued by said party of the first part, and herein described, of the third part.

Witnesseth, that whereas, under the General Internal Improvement Laws of the State of Tennessee, passed 11th February, 1852, and the acts amendatory thereto, the party of the first part has become liable to the State of Tennessee in the sum of one million

six hundred and eighty-four thousand eight hun- 265
dred dollars, being the amount of bonds of said State loaned to said party of the first part, and moreover is under obligation to pay to the State of Tennessee semi-annually an amount equal to the amount of the same annual interest upon the said bonds so loaned, as well as an amount of money equal to the principal of said bonds, so loaned to the party of the first part, when and as the same become due and payable; and whereas, by Act of the said State of Tennessee, entitled, "An Act to 266
liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee," passed February 25th, 1869, the Railroad Companies, so receiving aid from the State, of which the party of the first part was one, are authorized to issue their own bonds to an amount equal to the bonds so received from said State, and are authorized so to use said bonds as to retire and return to said State, bonds of said State of Tennessee to an amount equal to that loaned to said company, or advanced 267
for its benefit, for the security of which new issue of bonds, the holders thereof, it is by said act declared, shall, with the consent of such railroad company, be entitled to all the lien, rights and privileges reserved to the said State for its own security and protection.

And whereas, The party of the first part has accepted the terms and provisions of said Act, and has for the purpose aforesaid caused to be issued its bonds, dated 1st July, 1871, to the extent of one 268
million six hundred and eighty-five thousand dollars, and numbered from one to sixteen hundred and eighty-five (1685), inclusive, each for one thousand dollars, payable in gold coin of the United States, at New York, or two hundred and five pounds sterling, payable in London, at the option of the holder, with interest at seven per centum per

annum, payable semi-annually, in gold coin at New York, or in sterling at London, as aforesaid, at the option of the holder, for which interest coupons or warrants, payable as aforesaid, are attached to said bonds; and has delivered said bonds with the said coupons attached, to Wm. Butler Duncan, and Adrian Iselin and Richard T. Wilson, as agents of the party of the first part, to be substituted in place of the claim and demand and liability now held against the party of the first part by the said State of Tennessee, for which purpose of substitution the said Wm. Butler Duncan, Adrian Iselin, and Richard T. Wilson, are hereby made and appointed the agents of the said party of the first part, and which substitution under said agency, said parties of the second part are proceeding to make and perfect.

And whereas, under the laws of the said State of Tennessee, the said State has a lien upon the following named property of this company, to-wit: The entire road in the State of Tennessee, including the right of way, grading, bridges, masonry, iron rails, spikes, chairs, and the whole superstructure and equipments, and all the property owned by the company as incident to or necessary for its business, and all depot stations, and all the property and assets attached thereto, or belonging to said company, within the State of Tennessee, which under the said Act of 1869 upon the return of said State bonds to the said State of Tennessee by any person or corporation, with the consent of such indebted railroad corporation, shall enure to the benefit and for the security of the person or corporation so paying off the said indebtedness or liability of such corporation to the State, or returning to it its said bonds.

Now then, know all men by these presents, that in consideration of the premises, and of the sum of five dollars to said party of the first part, paid by

the said parties of the second part, and to make 273
good and secure the rights of the holders of the said bonds herein described and now issued by the party of the first part, and who are in fact the payers of the said indebtedness of the said party of the first part to the State of Tennessee, within the meaning of said Act of February 25th, 1869, and to the extent thereby authorized, the said party of the first part doth hereby consent that the said parties of the second part shall pay and satisfy to the said State of Tennessee the debt and liability due by the 274
said party of the first part to the said State, and doth hereby approve such payment, and doth also hereby consent that upon the payment aforesaid being made, or to the extent that it shall be made, and as it is, or may be from time to time made, said parties of the second part shall, in pursuance of the terms and provisions of the Act last above herein referred to, be vested with, and shall have and hold all the lien or liens which the State of Tennessee had or has upon the property of the said party of the 275
first part hereinbefore described, in the State of Tennessee, and shall have the same right to enforce the same which the State of Tennessee had, and that said parties of the second part shall be, and are hereby placed in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same. To have and to hold the rights, powers and privileges hereby consented to, and which arise under the said Act of the State of 276
Tennessee with the consent and approval of the said Mobile and Ohio Railroad Company to them, the said parties of the second part, their survivors and survivor, and their successors, upon trust, however, for the use, benefit, advantage and security of the holders of the bonds, herein described, issued by the said Mobile and Ohio Railroad Company,

parties of the third part, to these presents and their assigns, and it is hereby declared, that in case of the death or resignation of the said parties of the second part, the said party of the first part shall appoint new Trustees in their place and stead; and in case any one or two of said Trustees die or resign, such vacancy shall be filled by the joint appointments of the remaining Trustee, or Trustees, and the President of the Mobile and Ohio Railroad Company, with the approval of the Board of Directors thereof. And the said party of the first part doth agree and covenant to and with the said parties of the second part, their survivors and survivor, and their successors, that it, the said party of the first part, will in good faith and at all times hereafter do and perform all things necessary and proper for the protection and security of the said parties of the third part, and of the said parties of the second part, and their assigns, as the same may be reasonably required of it, to make good and effectual this lien and security of said parties, about the payment of their said debts and demands, and to secure the enforcement of their remedies for the payment of said bonds and the interest accruing thereon, in case default be made in the payment of said bonds and coupons, or any part or portion thereof, or default be made in the performance of the covenant herein contained, providing for the creation and application of a sinking fund for the gradual retirement of the bonds herein described, according to true intent and meaning of these presents, and of the said acts hereinbefore referred to, of the General Assembly of the State of Tennessee. And the said party of the first part doth further covenant to and with the said parties of the second part, and of the third part hereto, and their assigns, that on the first day of April, 1873, and on the first day of April of each year thereafter, said party of the first part will from the net earnings of

said Road set aside an amount equal to one per 281
centum of the amount of bonds issued and outstanding under the provisions thereof, as a Sinking Fund for the redemption of the bonds secured by these presents, and that it will invest said Sinking Fund, and the interest accruing thereon, in the purchase of the bonds herein secured, at a rate not exceeding Ten per centum above par, and accrued interest; the bonds so purchased shall be immediately registered, stamped and endorsed, as irrevocably belonging to said Sinking Fund, and not 282
farther transferable, and said bonds and coupons so purchased and assigned to the Sinking Fund by such registration, stamping and endorsement, shall be ever void and cancelled for all other purposes. In case bonds hereby secured cannot be purchased at or under the rate above named, within three months after the setting apart of such money for account of said Sinking Fund, then such other good securities as may be agreed on by the parties of the first and second part shall be purchased and 283
assigned to said Sinking Fund, and all such securities shall be placed with such Depository and in such manner as said parties of the first and second part may from time to time agree upon; and the interest accruing upon said Sinking Fund shall be collected by the party of the first part, and invested as herein provided; and all securities assigned to or purchased for said Sinking Fund shall be, and hereby are, irrevocably pledged for the security and ultimate redemption of the principal and inte- 284
rest of the bonds hereinbefore described and issued by the said party of the first part for the uses and purposes herein declared. And the said parties of the second part are hereby released from executing the bond required of Trustees under Section 1974 of the Code of Tennessee. And the said parties of the second part do hereby accept the Agency and Trusts herein and hereby imposed upon

285 them, and do promise and agree faithfully and to the best of their ability to perform the duties hereby provided to be done and performed by them.

It is understood that the acts of any two of the said Trustees hereunder shall be valid and effectual in the performance of the duties hereby declared, the same as if all had joined therein; that said Trustees may in all cases act by an agent duly appointed over their hand and seal, except in such matters as are by law required to be performed in
286 their proper person; that they shall be fully indemnified and repaid by the party of the first part, including a reasonable compensation, or out of the Trust Funds which may come into their hands, for their reasonable cash fees and expenses by them incurred about the performance of the acts and things herein and hereby required of them; and shall not be required to act in the execution of the trust herein declared, except at their own option, unless the party or parties requesting them so to
287 proceed shall furnish them reasonable indemnity against the loss, costs, trouble and expense they may incur or be at in so doing.

In testimony whereof, the said party of the first part has hereto set its Corporate Seal and the hand of its President, by authority of a resolution of its Board of Directors duly given. And the said parties of the second part have hereunto set their
288 hands and seals.

SEAL OF COMPANY.

(Signed) ABRAHAM MURDOCK,
Pres't Mobile & Ohio Railroad Co.
W. BUTLER DUNCAN, [L. S.]
ADRIAN ISELIN, [L. S.]
R. T. WILSON, [L. S.]

Attest:

A. L. WILLOUGHBY,
Sec'y & Treas'r M. & O. R. R. Co.

STATE OF NEW YORK, } ss.: 289
City and County of New York, }

On this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-one, in the city of New York and State of New York, personally appeared before me, the undersigned, Geo. W. Colles, a Commissioner of Deeds for the State of Tennessee, resident in New York City, the within-named Abraham Murdock, President of the Mobile and Ohio Railroad Company, one of the within-named bargainers, with whom I am personally acquainted, and who, being first duly sworn, deposes and says that he is President of the Mobile and Ohio Railroad Company, and is acquainted with its corporate seal; that the seal purporting to be such, above affixed, is such corporate seal, and was duly affixed to the within instrument by him, the said President; and also he, the said President, set his hand thereto, both by authority of a resolution of the Board of Directors of said Company, duly given. And also then and there personally appeared William Butler Duncan, Adrian Iselin and Richard T. Wilson, others of the within-named bargainers, before me, with each of whom I am personally acquainted, and who each acknowledged that he had executed the within instrument for the purposes therein contained. 290 291

Witness my hand and seal, the day and year first above written.

{ COMMISSIONER'S SEAL. } 292

(Signed) GEORGE W. COLLES,
Commissioner for Tennessee in New York.

Deposition of Joseph W. Drexel.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis and Charleston R. R. Co. 1

vs.

THE MEMPHIS AND CHARLESTON R. R. Co. *et al.* 2

Testimony and proofs for final hearing on the part of the respondents in the above entitled suit taken under and pursuant to the 67th Rule in Equity as amended, before William H. De Lancey, Special Examiner, duly appointed herein.

52 Broadway,
New York, March 1st, 1880. 3

Deposition taken by consent of Counsel in the above entitled suit before William H. De Lancey, Special Examiner.

(Deposition taken subject to all legal objections of both parties.)

Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders. 4

E. L. ANDREWS,
Of Counsel for Complainants.

Deposition of Joseph W. Drexel.

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Present—CHAS. H. TWEED,
Of Counsel for Defendants and Substitution Bondholders. 4

E. L. ANDREWS,
Of Counsel for Complainants.

5 JOSEPH W. DREXEL, a witness produced on the part of the respondents, being affirmed as a witness, testified as follows:

My name is Joseph W. Drexel; my age forty-nine: my residence New York City; no occupation; have retired from business.

1 Q. Before you retired from business, in what firms were you a partner?

A. In the firm of Drexel & Co., Phila., Drexel,
6 Winthrop & Co., of New York, until July, 1871, and of Drexel, Morgan & Co., and also Drexel, Harjes & Co., Paris; I retired from the firms of Drexel & Co., Drexel, Morgan & Co. and Drexel, Harjes & Co., Dec. 31, 1875.

2 Q. While you were a member of those firms did they deal as bankers in the bonds of the State of Tennessee?

A. We dealt in bonds generally, and that, of course, included the bonds of Tennessee.

7 3 Q. Had your New York and Philadelphia firms representatives in the Stock Exchanges of those cities?

A. Yes.

4 Q. Were you familiar with the manner in which Tennessee bonds were dealt in on those Stock Exchanges?

A. Yes.

5 Q. Did you ever know or hear of any Tennessee bonds being bought or sold as carrying a lien upon
8 any railroad in the State of Tennessee to which they might have been loaned?

A. No.

6 Q. Did your firm of Drexel, Winthrop & Co. in or about 1870 become the purchasers of any of the substitution bonds issued by the Nashville and Decatur Railroad Company?

A. We became part purchasers to a large extent

in company with R. T. Wilson & Co., A. Iselin & Co., and the New York Guaranty and Indemnity Company of the bonds issued by the Nashville and Decatur Railroad Company at that time. The whole amount of the loan was $2,100,000, and we bought about $1,900,000.

7 Q. At the time that your firm became part purchasers of those bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee and loaned to the Nashville and Decatur Railroad Company, or to its predecessors, that they had any lien or claim upon the property of that Company or its predecessors?

A. No.

8 Q. Did your firm, in connection with the N. Y. Guaranty and Indemnity Co., issue the advertisement for the sale of those bonds now shown you?

A. Yes, sir, we did—a copy of which advertisement is as follows:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & CO.,
18 Wall Street.

NEW YORK GUARANTY AND INDEMNITY CO.,
52 Broadway and Exchange Court.

13 9 Q. If the holder of any of the bonds of the State of Tennessee which had been loaned to the Nashville and Decatur R. R. Co. or its predecessors had asserted any lien or claim upon the property of that Company by virtue of those bonds, would you have made the purchase?

A. No, sir.

10 Q. Would you have issued that advertisement and given the bonds the endorsement of your firm if you had known of such a lien or claim being as-
14 serted?

A. No, sir.

11 Q. Those bonds were sold by the interested firms, or by some of them, to the public, were they not?

A. Yes.

12 Q. You and the other parties sold them to the public as first mortgage bonds, secured upon the property of the Nashville and Decatur R. R. Co., as stated in the advertisement issued by your firm
15 and the N. Y. Guaranty and Indemnity Co., did you not?

A. Yes, sir.

13 Q. Did you afterwards become yourself a purchaser of any of the substitution bonds of the Memphis and Charleston R. R. Co. issued under the purchase of the State lien?

A. Personally I subsequently bought $50,000 of the first mortgage bonds of the Memphis & Charleston R. R. Co., each of which bonds bears an en-
16 dorsement to the effect that the lien previously held by the State of Tenneesee against the road had been vested in trustees under an assignment from the State to be held as security for that issue of bonds.

14 Q. At what price did you buy those bonds and when?

A. To the best of my recollection at 90 to 95 and 17
subsequent to 1877.

15 Q. At the time of your purchase of those bonds had you any knowledge of any claim on the part of any holders of Tennessee State bonds loaned to that R. R. Co. or any other R. R. Co. in Tennessee that they had any lien or claim upon the property of that or any other R. R. Company by virtue of those bonds?

A. I say most emphatically, no; I would not have entertained the proposition for a moment if I 18
had known of any such claims.

16 Q. Are you still a holder of those Memphis and Charleston bonds?

A. I am.

Cross-examination by MR. ANDREWS:

17 x Q. Where did you reside at the times mentioned in your direct examination?

A. For part of the time I resided in Philadelphia, 19
but during these transactions I was in New York the major part of business hours, and in the summer of 1871 I came to New York to reside permanently.

18 x Q. Did you purchase $1,600,000 of those substitution bonds without getting any legal advice as to their title?

A. I did not know them under the name of "substitution bonds," but we bought about that amount in connection with other parties of the first mort- 20
gage bonds of the Nashville & Decatur Railroad. We took all the precautions we usually did in buying bonds for ourselves, and had we felt the necessity of having any legal assistance we would have called it in. I do not recollect whether we felt any such necessity or not or whether we took legal advice or not. In case we thought there was necessity for

legal advice we handed it to our regular attorney. Mr. Robert Winthrop of my firm would be more likely to know than I.

19 x Q. Who brought these securities first to your notice.

A. Mr. R. T. Wilson, so far as I recollect.

20 x Q. Did you not have frequent conversations with Mr. Wilson on the subject of these securities.

A. I recollect talking with Mr. Wilson about them after the issue of the advertisement after I came to New York. Mr. A. J. Drexel had more frequent conversations with Mr. Wilson previous to the purchase.

21 x Q. Did Mr. Wilson at any of the times mentioned in your direct examination exhibit to you the opinion of Judges Davies and Davis, to the effect that the Tennessee State Bonds were paramount liens upon the railroads to which they were issued, or speak to you of that opinion in any way.

A. No, sir; he never did. He could not have described them as first mortgage bonds had he done so.

22 x Q. Did you have any conversation with Mr. Iselin while the bonds were being sold.

A. Yes.

23 x Q. Did he exhibit or speak of that opinion to you?

A. No, sir; he did not.

24 x Q. Please produce a copy of any opinion which your firm received upon this subject?

A. I will if such a one ever existed or is now in existence.

Re-direct:

25 Q. Did not Mr. Donaldson, as Chairman or Mr. Williams, as Secretary of the Committee of Tennessee bondholders or any Tennessee bondholders ever exhibit to you any such opinion of Davies and Davis, or any opinion to that effect? 25

A. No.

26 Q. If any claims on behalf of Tennessee State bondholders that their bonds constituted a paramount lien upon the property of the railroad company to which they were loaned had been communicated to your brother Anthony J. Drexel, or to your partner Mr. Winthrop, would they in the usual course of business have communicated that fact to you before the tranaction was consummated? 26

A. Yes.

Re-Cross:

27 x Q. Could you not have obtained a printed copy of Davies and Davis' opinion had you sought for it? 27

A. I neither knew then nor do I know now that such an opinion existed. I never heard of it till within a week.

JOS. W. DREXEL.

Subscribed and affirmed before me, this 1st day of March, A. D. 1880.

WILLIAM H. DELANCEY, 28
Special Examiner.

29 I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly affirmed and cautioned, in
30 the above-entitled suit and exinamed, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 1st, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

31

32

Deposition of B. O. White.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.,

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

1

2

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 2, 1880.

Present—Mr. TWEED for respondents.
Mr. ANDREWS, for complainants.

(Deposition taken subject to all legal objections of both parties.)

4

B. O. WHITE, a witness produced on the part of the respondents, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

5 1 Q. What is your name, residence, occupation and age?

A. B. O. White; I reside on Staten Island; am Secretary of the N. Y. Stock Exchange, and am of full age.

2 Q. Are you a member of the N. Y. Stock Exchange, and how long have you been so?

A. I am and have been for a quarter of a century.

3 Q. Are you familiar with the method of buying and selling State bonds on the Exchange, and how
6 long have you been so familiar?

A. I am and have been ever since I was a member, and also before while I was a clerk with bankers in the street as far back as 1849.

4 Q. State if you know how Tennessee State bonds were bought and sold on the Exchange and in the New York market?

A. They are sold as "Old Tennessees," "New Tennessees," and "New Series." Before the war they were sold as "Tennessee 6's" and "Tennes-
7 see 5's." I never heard of their being sold in any other way.

5 Q. Was any Tennessee six per cent. bond or Tennessee 5 per cent. bond a good delivery for purchases made in the regular way on the New York Stock Exchange of either class of these bonds from 1852 to the outbreak of the war?

A. All I can say is the same as the answer to the last question.

6 Q. When Tennessee State bonds are bought at
8 the New York Stock Exchange can the purchaser know for what purpose the bonds he is purchasing were issued, whether to railroads or for building the Capitol, or for the Bank of Tennessee, or for turnpikes, or for any other purpose?

A. He cannot as called and dealt in in the market.

B. O. WHITE.

Subscribed and sworn to before me, this 10th day of March A. D. 1880. 9

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in 10
the deposition hereto annexed I was attended at my office, No. 52 Broadway, New York City, by the counsel and witnesses aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined and the deposition was reduced to writing and read to the witness, and by him subscribed in my presence.

Dated March 10th, 1880.

WILLIAM H. DELANCEY,
Special Examiner. 11

12

1

Deposition of James A. Roosevelt.

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement bonds of Tennessee, issued to the Memphis & Charleston R. R. Co.

2

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

3

Testimony and proofs for final hearing on the part of the respondents, taken under and pursuant to the 67th Rule in Equity, as amended; taken before WILLIAM H. DELANCEY, Special Examiner duly appointed herein.

NEW YORK, March 12, 1880.

4

Present—Mr. CHAS. H. TWEED, for respondents.
Mr. E. L. ANDREWS, for complainants.

5 JAMES A. ROOSEVELT, a witness produced upon the part of the respondents in the above-entitled suit being first duly cautioned and sworn therein, to testify the truth the whole truth, and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct-examination:

6 1 Q. Please state your name, age, residence and occupation?

A. James A. Roosevelt; fifty-four years of age; reside in New York city, and am a banker.

2 Q. How long have you been acquainted with the markets of New York in respect of the securities dealt in, in such markets?

A. More than thirty years; during which time I have been carrying on the business of merchant and banker in New York.

7 3 Q. After the settlement made by the East Tennessee, Va. & Ga. R. R. Co. with respect to its indebtedness to the State of Tennessee, did you become the purchaser for yourself or others of any of the substitution first mortgage bonds of that company which were issued upon such settlement?

A. Yes; I did both individually, and for other parties for whom I had money to invest.

4 Q. After that settlement was made, did you become a purchaser of any of the shares of stock of the

8 East Tennessee, Va. & Ga. R. R. Co.?

A. I did, in connection with my brother, to the extent of $78,000.

5 Q. At the time of the purchase of those bonds or that stock had you ever heard of any claim being asserted by any of the holders of bonds of the State of Tennessee that these bonds were liens upon the roads to which the bonds were loaned by the State?

A. With regard to the stock I had no information 9
of any such claim whatever; with regard to the great majority of the bonds I can say the same thing; I may have purchased recently a few bonds since I heard of this suit.

6 Q. Did you also become the purchaser of any of the first mortgage substitution bonds of the Memphis & Charleston R. R. Co., which were secured by the transfer of the State lien to A. Iselin & Co., and by them to the Farmer's Loan & Trust Co.?

A. I have purchased and hold a large number of 10
those bonds at the present time.

7 Q. Did you consider the transfer of the State lien as security for those Memphis & Charleston bonds a material element in respect of the value of those bonds?

A. Most assuredly.

8 Q. At the time when you purchased those bonds had you heard of any claim being asserted that any of the holders of the bonds of the State of Tennessee loaned to Railroads had any lien upon those 11
Railroads to which those bonds were loaned?

A. I never heard of any such claim being made.

9 Q. Did you ever hear of any of the bonds of the State of Tennessee being bought or sold as carrying any lien in favor of the bondholders upon the Railroads to which those bonds had been loaned?

A. No; I never had heard of any sales being made in which it was set up that there was any claim upon the railroads; I never heard of any such claim being made until after the commencement of this suit. 12

J. A. ROOSEVELT.

Subscribed and sworn to before me, this 12th day March, A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

13 I, WILLIAM H. DELANCEY, special examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-en-
14 titled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated April 3d, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

15

16

Deposition of Adrian Iselin, Junior.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of the State of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co., 2

vs.

THE MEMPHIS & CHARLESTON R. R. COMPANY *et al.*

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein. 3

No. 52 BROADWAY,
NEW YORK, February 11th, 1880, 1 P. M.

Parties met pursuant to notice.

Present—MR. E. L. ANDREWS, of Counsel for compl'ts.

W. N. Y. C. HUMES, of counsel for resp'ts. 4

5 ADRAIN ISELIN, Junior, a witness produced on the part of the respondents, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

Deposition taken subject to all legal objections of both parties.

6 *Direct-examination* by MR. HUMES:

1 Q. What is your name, business and residence?

A. Adrian Iselin, Jr.; banking business, New York City. I was born in the city, and have lived here for thirty-three years.

2 Q. Did Peter Geddes, one of the complainants in this case, call on you and make enquiries or have conversation with you in relation to the Memphis & Charleston Railroad Company purchasing State
7 bonds of the State of Tennessee to pay its debt to the State for bonds loaned to it by the State; if yea, please state as accurately as you can what Mr. Geddes said.

A. Mr. Geddes called very frequently at our our office about Tennessee State matters, and in his conversation several times expressed his desire that the Memphis & Charleston R. R. Co. should pay off its debt to the State of Tennessee, stating that he hoped and expected that when all
8 the R. R's. had paid off, it would be easier for the bondholders to make a settlement with the State, as he feared that as long as any R. R's. were in the market buying State bonds their interest would be to keep the bonds down and prevent a settlement.

3 Q. At what date did the facts you have related in the last answer occur?

A. I cannot recollect the exact date, but think it

was in the last part of the year 1876 or beginning of 9
1877.

4 Q. Was not Mr. Geddes a member of the Committee of Tennessee bondholders at the time?

A. I don't know.

5 Q. Please read Respondents Exhibits 1 and 2 to Calvin A. Stevens' deposition in this case, and say whether Mr. Stevens did not show you the telegram and letter constituting these Exhibits before he sent them to Gov. Porter, and what he said as to his desire to compromise and the figures he was 10
willing to compromise at.

A. Mr. Stevens showed me both the telegram and letter, but not before he sent them to Governor Porter. He brought in a press copy of the telegram, of which I have a very distinct recollection, and said he had just sent it off; I do not recollect what day he showed me the letter, but I think it was within a day or two after he had sent it; in showing me the telegram he said he was perfectly willing to take fifty per cent., and six per cent. in- 11
terest, as that was all he thought the State could afford to pay, and he did not believe in pressing a debtor to pay more than he could afford—or words to that effect; these conversations were in December, 1877.

Cross-examination by MR. ANDREWS:

6 x Q. Are you a member of the firm of A. Iselin & Co?

A. Yes, sir. 12

7 x Q. When did you or your firm commence making purchases of Tennessee State bonds for the purpose of delivering them to the State in connection with the affairs of the Memphis and Charleston Railroad Company?

A. I cannot give the exact date without referring to our books.

13 8 x Q. Please refer to your books and produce the information at the adjourned examination.

A. I will.

9 x Q. Also show from your books how many bonds as aforesaid had been purchased as aforesaid in the last part of 1876, or the beginning of 1877, down to the time of the conversations you have testified to with Messrs. Geddes & Stevens, if any purchases were so made?

14 (Objected to because it assumes a fact not proven, viz.: That the bonds were purchased in the latter part of 1876 or the beginning of 1877 when there is no such proof, and also assumes that the bonds were purchased six months after the Memphis and Charleston Railroad debt was settled.)

A. I can give the dates by referring to the books.

10 x Q. Did not your firm purchase Tennessee State bonds for delivery to the State in connection
15 with the affairs of other Tennessee railroads before its purchases in connection with the affairs of the Memphis and Charleston R. R.; if so, what roads, when and to what amounts—whether as individuals, a firm, or in connection with other individuals or firms?

Adjourned to 12th inst. at 1 P. M.

In answer to cross question 7 the witness now says:

16 We commenced on July 6, 1877.

In answer to cross question 9 the witness now says:

The purchases were all made between the 6th of July and 26th of July, 1877.

In reply to cross question 10 he says:

We did not purchase any before we purchased for the Memphis and Charleston R. R.

11 x Q. Please furnish the date of the contract, if any, with the Memphis & Charleston R. R. Co. or any other person in pursuance of which you made those purchases of bonds? 17

A. We had no contract with the Memphis & Charleston R. R. or any body else at the time we purchased those bonds.

12 x Q. When was your contract made?

A. It was the date of this tri-partite agreement, August 21, 1877.

13 x Q. At what date did Adrian Iselin & Adrian Iselin, Jr., composing the firm of A. Iselin & Co., make the offer or proposition, if any, to the Memphis & Charleston R. R. Co., or parties acting on its behalf, which resulted in the passage of the resolution of the board of directors of said company of the 31st day of May, 1877? 18

A. There was no proposition made before that date, so far as I know.

14 x Q. Do you know whether you or your firm got any legal opinion in reference to the rights of parties and substitution bondholders and others under this arrangement for which you purchased these bonds? 19

A. We did not go into this arrangement without legal advice; we had the opinion of Chas. F. Southmayd.

15 x Q. Had not your firm some years previously sold a large amount of substitution bonds of the East Tennessee, Virginia & Georgia R. R. Co.?

A. Yes, sir. 20

16 x Q. At what date was your firm furnished with a copy of the resolution of the Memphis & Charleston R. R. Co., passed May 31, 1877, by the officers of that company?

A. I can't recollect that date.

17 x Q. What was the average price of the bonds you purchased for the Memphis & Charleston R. R.?

A. Forty-four.

21 18 x Q. Did you make purchases of Tennessee bonds for similar purposes; if so, when, what amount of bonds and at what prices and for what roads?

A. We purchased from Dec. 6th to Dec. 28th, 1877, ninety thousand dollars Tennessee State bonds, on the order of Mr. E. W. Cole, President of the Nashville, Chattanooga and St. Louis Railway, at prices ranging from 38 to 44; I believe the bonds were used to pay for the Tennessee and Pa-
22 cific Railroad, but I don't know.

19 x Q. At what average price were the substitution bonds of the East Tennessee, Virginia and Georgia R. R. sold?

A. The first sale was at 82½ for one million bonds, by the E. T. & Va. R. R.; I can't give the prices of the rest; I think it was between 82½ and 90.

20 x Q. Did not A. Iselin & Co. sell some of those bonds here or in Europe?

A. They were mostly all sold in Europe; some
23 few were sold here, to a great extent by or through A. Iselin & Co.

21 x Q. At what prices did A. Iselin & Co. sell these bonds?

A. I decline to answer that question.

22 x Q. When did you or your firm make up your minds to enter upon this agreement with the Memphis and Charleston R. R. Co.

A. I cannot give that date.

23 x Q. When did you get the opinion of Mr.
24 Southmayd, to which you have referred?

A. I cannot give that date; I don't see where I could get it.

ADRIAN ISELIN, JR.

Subscribed and sworn to before me, this 12th day of February, A.D. 1880,

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, 25
duly appointed by the Circuit Court of the United States, for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended, at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid; that the said witness was duly sworn in the above-entitled suit and examined, and the deposition was 26
reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated February 12th, A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

27

28

Deposition of W. H. Osborn.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of internal improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 2

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing on the part of the respondents, taken 3 before William H. De Lancey, Special Examiner, duly appointed herein, under and pursuant to the 67th Rule in Equity, as amended.

NEW YORK, February 13, 1880.

Parties met pursuant to notice.

Present.—Mr. W. Y. C. HUMES,

For Respondents. 4

MR. L. E. ANDREWS.

For Complainants.

WILLIAM H. OSBORN, a witness produced on the part of the respondents, being first duly cautioned

Deposition of W. H. Osborn.

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Present.—Mr. W. Y. C. HUMES,

For Respondents. 4

MR. L. E. ANDREWS.

For Complainants.

WILLIAM H. OSBORN, a witness produced on the part of the respondents, being first duly cautioned

and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by Mr. HUMES:

1 Q. What, if any, relation do you hold to any of the railroads of Tennessee, and if yea, how long have you held the same?

A. I was one of the Purchasing Committee that purchased the Mississippi Central Railroad, under a Décree of the Federal Courts in Tennessee and Mississippi.

2 Q. Do you know Peter Geddes; if so, how long have you known him?

A. Yes; I know him very well; have known him perhaps ten years.

3 Q. Did you ever have any conversation with him touching the Tennessee State Bonds, and the settlement of the purchasers of the Mississippi Central Railroad with the State; if yea, when did these conversations occur; and what did he say about such settlement?

A. We purchased nearly twelve hundred bonds, and when we had probably two-thirds in hand I told Mr. Geddes we had bought the bonds and intended to buy the whole amount for delivery to the State, at which he seemed gratified, from the fact that every bond paid off diminished the State debt to that extent.

4 Q. Did you borrow from Mr. Geddes any State bonds to make up the amount to deliver to the State?

A. No; I did not borrow any from him.

5 Q. Did you apply to him to lend you bonds; if yea, what did he say when you made this application?

A. Towards the close of our purchases of State 9
bonds, and, I believe, when the State officer was here, we decided not to use past due coupons, of which there were fifty or sixty thousand dollars in excess upon the bonds, but to buy from forty to sixty bonds, so as to pay bond for bond. There were no bonds offering in the market for a day or two, and I asked Mr. Geddes if he would lend me some bonds. Mr. Geddes said, to the best of my recollection, that if the Tennessee bonds were his personally he would do so with pleasure, but that 10
his block of bonds were the property of George Smith, Esq., and that he would prefer not to break bulk in the block if I could get along without it, or words to this effect. I succeeded in purchasing the bonds a day or two afterwards from other parties.

6 Q. What demand, or urgency, if any, did the State authorities bring to bear upon the purchasing committee to induce them to this settlement?

A. We bought the road from Canton, Miss., to the Ohio River, knowing that the portion of the line 11
lying within the confines of the State of Tennessee was in possession of the State authorities. The State Receiver held on with a close grip; it was too good a thing to give up; at any rate persuasion would not do it. We all knew that we could not make any money out of the whole line unless we got that piece out of the hands of the State. They understood our trouble just as well as we did without feeling the pain, and intensified it by taking our engineers and train men off the train at the north 12
boundary of Tennessee, having run only twenty-seven miles, and then we had to have a new set waiting at the south line of Tennessee, where their men got off, thus firing at us at both ends. I had no time to call upon the honorable gentleman at Nashville, but as a railroad manager I knew that we were day by day ground between two millstones,

13 and they would not let up unless we paid the debt and got the State lien discharged. The necessity was so exigent that we borrowed the money for the purpose, and got the road relieved from the encumbrance, and free from every recorded lien north of the south line of Tennessee.

7 Q. Did you make use of the acts of 1869 and '70 to get an assignment of the State lien to support bonds of the company issued to obtain the necessary funds?

14 A. We paid in 1,199 bonds, and we issued 1,199 bonds, and each bond bears an endorsement, certified by the Controller, transferring the lien of the State to the bond, as follows:

"STATE OF TENNESSEE, COMPTROLLER'S OFFICE.

I certify that the Chicago, St. Louis and New Orleans Railroad Company has this day liquidated the indebtedness of the Mississippi Central Railroad Company to the State of Tennessee for State bonds,
15 issued pursuant to law under the statutes of said State, to establish internal improvements, and that this bond is substituted for the same amount of indebtedness of the said railroad company to the said State, and the holder of the said bond is hereby subrogated to and secured by the lien held by said State, and to all other rights and remedies reserved by the State in the statutes upon the railroad and property of said Mississippi Central Railroad Company. This bond is one of eleven hundred and
16 ninety-nine bonds, and is executed and issued by virtue of law, takes the place of a bond of the State of Tennessee, and is a first mortgage bond.

November 28th, 1877.

(Sd.) JAMES L. GAINES,
Comptroller of the State of Tennessee."

8 Q. When was the new company formed; and

when was the mortgage of the company to support the bond you have just explained executed ? 17

A. The Chicago, St. Louis and New Orleans Railroad Company was formed on the 7th day of November, 1877, and the mortgage executed on the 8th November, 1877, and it was registered in each county on the line of the road as soon as practicable.

(Mortgage filed herewith and marked Respondent's Exhibit No. 1. W. H. De. L.' Sp'l Ex'r.) 18

(Receipt and certificate of the Governor and Secretary of State of Tennessee, also herewith filed, marked Respondents's Exhibit No 2. W. H. De. L., Sp'l Ex'r.)

9 Q. Did you sell those company substitution bonds in open market, on the faith of this assignment of the State lien and the mortgage just exhibited ?

A. Yes ; they sold at 10 to 15 per cent more than the market price of the other first mortgage bonds secured by the same mortgage in 1878. 19

Cross-examination by MR. ANDREWS :

10 x Q. How many of the Tennessee State Bonds delivered to the State, as you have certified, were of the numbers issued by the State to your railroad company ?

A. I don't know, and never had any occasion to inquire. 20

11 x Q. Please produce from your books the numbers of the bonds so delivered ?

A. I will endeavor to do so upon the return of our Secretary, now absent.

12 x Q. Were you not aware that in a suit that was pending in reference to the Mobile & Ohio Rail-

road, the question was presented as to the lien of the Tennessee State Bonds upon the railroad to which they were issued?

A. I read the newspapers and may possibly have read this, like other daily news. If this question has any legal bearing upon the question at issue, I wish to state that I have found from experience that this layman knows very little of law questions.

13 x Q. Did you not learn anything in reference to the lien of the State bonds from Mr. Geddes?

A. My esteemed friend Mr. Geddes never began to moot the right of bondholders to crucify railroads until he and his brother bondholders were defeated in the Tennessee Legislature a year or two after we settled with the State.

14 x Q. Did you go into this substitution scheme without any legal advice; and if you had such advice was it in writing or oral?

A. The counsel of the Purchasing Committee was Hon. John A. Campbell, formerly Judge of the U.S. Supreme Court; and the Hon. James Emott of New York. Steps of this character are seldom taken without the advice of counsel, and I suppose we had a great many consultations on that subject. I am not certain that we have any written opinion on this subject, confined expressly to this subject.

15 x Q. Was not an opinion of Judge Campbell furnished in writing upon this subject?

A. I have no doubt that I asked Judge Campbell, either in writing or verbally, if we could have the substitution of the State of Tennessee; and that we were safe in paying out a large sum of money to secure this right; and that when he and Judge Emott prepared the papers and documents for my signature I executed them.

16 x Q. Did you not have these substitution bonds placed on the New York Stock Exchange after the commencement of these suits of Stevens v. the Chi-

cago, St. Louis & New Orleans Railroad Company, 25
and others now pending?

A. The application to the Stock Exchange bears date April the 21st, 1879; the Tennessee Lien Bonds were sold previously.

17 x Q. Did you ever hear of any legal opinion to the contrary of the views of Judge Campbell on this question?

A. I have heard legal opinions, but whether they were based upon actual business I did not know, and therefore I only attached importance to such 26
an opinion as was based upon actual business.

18 x Q. Did you not hear of the opinion of Charles O'Conor?

A. I have seen it.

19 x Q. What was the lowest price you paid for the Tennessee State Bonds purchased, as you have testified, and also the average price?

A. I don't remember, but may ascertain from the books; but I decline to furnish it, as the books referred to are those of the Illinois Central R. R. Co. 27

(Complainant's counsel requests witness to produce the same.)

(Witness declines, unless ordered by the Court to do so.)

Cross-examination suspended.

Re-direct:

20 Q. At what period or year did you sell the 28
Substitution Bonds of the Company?

A. We sold them at the close of 1877, and during 1878, except $100,000 sold in 1879; ten hundred and ninety-nine thousand were sold in 1877 and 1878, and $100,000 in 1879, in November.

21 Q. In answer to cross-question 13, do you not intend to say that Mr. Geddes did not begin to as-

29 sert in your hearing that a lien existed in favor of State Bonds on Railroads to which they were issued?

A. Yes; that was the time when he began to talk to me on that subject.

Re-cross:

22 x Q. To whom were the subrogated bonds sold in 1877 and 1878?

A. To five or six parties; I can get their names
30 from the books; to Mr. Sturges, Mr. Cutting, the Illinois Central Company, Sidney Webster, E. H. Harriman & Co., and others.

23 x Q. Are not the Mr. Sturges and Mr. Cutting you have referred to directors of the Illinois Central R. R. Co.?

A. Yes.

24 x Q. Does not the Illinois Central R. R. Co. own a majority of the stock of the Chicago, St. Louis & New Orleans R. R. Co.?

31 A. Yes.

25 x Q. You were also a purchaser of these bonds?

A. I hold some of these bonds which I purchased through brokers.

26 x Q. You have referred to the claims of the Tennessee State bondholders as not presenting any ground of right, or any obstacle to the carrying out the substitution scheme; please explain these words contained in the recital of the second mortgage of the Mississippi Central R. R, Co., and state what
32 notice you derive therefrom of the position of the State bonds of Tennessee: "And whereas, the State of Tennessee advanced to said company five hundred and seventy-four thousand dollars of its six per cent. bonds to aid in constructing that part of said company's road between the northern boundary of the State of Mississippi and the city of Jackson, in Madison County, Tennessee; which bonds consti-

tute a first lien on that part of said company's road 33
and equipments within the State of Tennessee."
Are you not President of the Chicago, St. Louis &
New Orleans Railroad Company; is not the Missis-
sippi Central a part of the line of road owned by
that company; are there not bonds outstanding
under the mortgage from which the above extract
was taken?

(Objected to, because the first sentence
assumes that the witness has stated a fact 34
which he has not. Secondly, the question
seeks from the witness his opinion as to the
construction of an instrument not in proof,
and is irrelevant and incompetent.)

A. I am President of the Chicago, St. Louis & New Orleans R. R. Co., of which the old Mississippi Central forms a part; and there are bonds outstanding of that mortgage. The extract read is in the mortgage. I have known of that mortgage 35
for five years; have examined it frequently, and have consulted at least six able lawyers on the subject of this second mortgage. No one of them ever understood it. Amongst other anomalies is the authority conferred upon the President to make the date of maturity of any one bond, by endorsement, at his pleasure, or the time or place of payment at his pleasure; and through that power, some of the bonds were made payable next day. I shall not attempt to construe any part of this perplexing mort- 36
gage. As to the particular question you have asked, I have never studied the paragraph or had my attention called to it before.

The witness further says: That on examination I find that we borrowed the bonds of the Illinois Central Railroad, and paid them in substitution bonds at a later date.

27 x Q. Did you not ask Mr. Geddes to buy some of the substitution bonds?

A. I think it very probable that I did.

28 x Q. Did he not refuse to purchase them on the ground that the Tennessee State bonds were a lien on the road?

A. He refused to buy them. I believe his chief objection was that he had as many Southern securities as he wanted; he had got through with those States down there. He has indulged in a good deal of conversation in relation to the lien of the State, but at which time he put forth his lien, or at which time he expressed his anxiety to get out of Southern securities, I can't tell.

29 x Q. Did not Mr Geddes tell you about the Mobile and Ohio case, and its involving the question of the lien of the State bonds on the railroads?

A. Yes; he has talked about the Mobile and Ohio case, and a great many other cases affecting the bond question.

30 x Q. Did you not show Mr. Geddes Judge Campbell's opinion?

A. I don't remember to have done so. If Mr. Geddes remembers my showing him any of Judge Campbell's letters, it is undoubtedly so.

31 x Q. Could the Tennessee section of your road pay this claim of the bondholders in case of their success?

A. If it was managed by the governor and other officers of Tennessee as it was before, it undoubtedly could. It was managed as local road; they charged arbitrary rates.

32 x Q. Do I understand you that there are no mortgages or encumbrances upon this Tennessee section other than this substitution mortgage?

A. The foreclosure proceedings wiped out the old mortgage of the old company, and I am informed there is no recorded mortgage in Tennessee.

Re-direct: 41

33 Q. What did you say of Mr. Douglas' opinion in reply to verbal interrogatories of complainant's counsel?

A. John M. Douglass was the general solicitor and president of the Illinois Central Company for many years. That company owned a large amount of the consolidated bonds in default. At the instance of the directors, Mr. Douglas went south, and examined the property and procured copies of all recorded papers, and upon his return enumerated, 42 among other points to be attained by the purchase of the road, he could pay off the Tennessee bonds and discharge the debt, purchasing the Tennessee State bonds at a discount.

Re-cross:

34 x Q. Was not that advice that you should purchase the Tennessee State bonds that were liens on your road?

A. No, sir; Mr. Douglass was well assured we 43 had the right to purchase any bonds of that State.

35 x Q. Has not Mr. Douglas lately, and since reading Charles O'Conor's opinion, stated that the Tennessee State bondholders had liens upon the railroads, and that in his judgment they would succeed in enforcing them in these suits?

A. I have not seen Mr. Douglas but once for several years; have had no communication with him on this subject, and never heard the effect of 44 O'Conor's opinion on him.

Adjourned to further notice.

45 NEW YORK, February 18, 1880.

Cross-examination continued:

36 x Q. Have you not purchased the Chicago, St. Louis & New Orleans Tennessee lien bonds since the commencement of this suit?

A. I purchased one for a poor widow last month; I purchased another for another widow the month before; I bought 20 for myself a few months ago; I bought 10 as a guardian for a trust fund.

46 37 x Q. Did you not say to Mr. Peter Geddes that at any rate your Company was very fortunate to have so few of the numbers of the Tennessee Bonds issued to your road now outstanding?

A. Yes; Mr. Geddes' affliction and grief on his ownership of an immense number of Tennessee Bonds, which cost him about par years ago, made our burden light in comparison.

38 x Q. Are there any bonds outstanding of the consolidated mortgage of the Mississippi Central
47 Railroad Company, executed May 1, 1872; and how many were issued?

A. The mortgage was for $8,000,000, and $3,000,000 were issued; the mortgage was foreclosed, and the property is now held under that foreclosure.

39 x Q. Are you not an officer of the Chicago, St. Louis & New Orleans Railroad Company, which so holds the property?

A. Yes; the President.

40 x Q. Have you not read that mortgage and the
48 following clauses thereof: "Whereas the Mississippi Central Railroad Company has now outstanding bonds and obligations in the aggregate amounting to four millions and six hundred and twenty-nine thousand dollars, which constitute a lien upon the whole or some portions of its railroad and property, described as follows * * * :

One million two hundred and seventy-nine thous- 49
and dollars for bonds advanced to it by the State of Tennessee which the Company is bound to pay and which are a lien upon its property by virtue of an act of the Legislature of Tennessee, entitled "An act to establish a system of internal improvements in this State," passed the 11th day of February, A. D. 1852?

A. We did not execute that mortgage; the mortgage was executed by H. S. McComb, President of the Mississippi Central Railroad Company; we are 50
now entirely satisfied that the recitals in that mortgage were incorrectly made, and have instituted proceedings in the State of Mississippi, and also in this Second Circuit, calling upon H. S. McComb, among other things, to explain that recital; and particularly to show what was done with the large amount of Tennessee State Bonds which, according to the statutes, could only be applied to the construction of the road; when these suits terminate I hope to be able to answer your question. 51

41 x Q. Did not your Company obtain the opinion of William Tracy, Esq., of the New York bar, in reference to the validity of the consolidated mortgage, and did he not in that opinion refer to the act of the Tennessee Legislature, passed on February 3, 1871, as containing the following words: "That nothing herein contained shall be construed in any way to impair or diminish the priority of the State's lien upon the property which may be mortgaged, as herein provided for, and, expressly, bonds which 52
have been or hereafter may be given by the State, shall be and remain a first lien on all the property of every description of the railroad company to which such bonds may have been given?

A. Our company, the Chicago, St. Louis & New Orleans Railroad Company, did not ask Mr. Tracy's opinion; there was no reference to that mortgage

53 after the purchase of that property subject only to priorities.

42 x Q. Were not the proceedings for the consolidation of the constituent companies into the New Orleans, St. Louis & Chicago Railroad Company delivered to the Secretary of State of Tennessee on the 10th of July, 1874?

A. The records and books of the old company are in the possession of H. S. McComb; we are demanding the same in three different lawsuits; I have not
54 personal or official knowledge of the facts you ask for.

43 x Q. When did the Chicago, St. Louis & New Orleans Company borrow the Tennessee State Bonds from the Illinois Central Railroad Company?

A. Early in November, 1877.

Re-direct:

44 Q. What did you mean by saying that the State of Tennessee made you pay off the State lien?

55 A. We had to operate the road from Cairo to New Orleans as an entirety; we applied on the road beyond the confines of the State all the earnings and a large amount of money for the purpose of improving the road and making it safe for life and property. But the State authorities would not pursue this course, and took the surplus, beyond the payment of employes, into the State Treasury, keeping the road in a very wretched condition physically; therefore as railroad men we could not operate that bad piece
56 in the middle of it; the State of Tennessee practically had the power to make us pay the State, and they did so.

W. H. OSBORN.

Subscribed and sworn to before me, this 18th day of Feb., 1880.

WILLIAM H. DE LANCEY,
Special Examiner.

I, WILLIAM H. DE LANCEY, Special Examiner, 57
duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was 58
reduced to writing and read to the witness, and by him subscribed in my presence, and that the Exhibits hereto annexed, marken "Respondent's Exhibit No. 1, W. H. D. L., Sp'l Ex'r," and "Respondent's Exhibit No. 2, W. H. D. L., Sp'l Ex'r," were introduced in evidence in said cause during the taking of said deposition.

Dated Feb. 18, 1880.

WILLIAM H. DeLANCEY.

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61 RESPONDENTS' EXHIBIT, NO. 1.
W. H. D. L., Spl. Exr.

CHICAGO, ST. LOUIS & NEW ORLEANS R. R. Co.
FIRST MORTGAGE
FOR
$13,000,000.
TO

62 A. SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH } *Trustees.*

NOVEMBER 8TH, 1877.

THIS INDENTURE, made this 8th day of November, Anno Domini one thousand eight hundred and seventy-seven, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part;
63 the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Missippi Railroad Company, of the third part, and Adolph Schreiber, of the City of New Orleans, in the State of Louisiana, James Fentress, of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph, of the City of New York, in the State of New York, Trustees, of the fourth part:

Whereas, A certain corporation, known as the
64 New Orleans, Jackson and Great Northern Railroad Company, organized under the laws of the States of Louisiana and Mississippi, heretofore owned and operated a certain railroad, extending from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, together with a branch thereof known as the Kosciusko Branch, from a point at or near Durant, in the State of Mis-

sissippi, to Kosciusko, in the said State of Missis- 65
sippi, and with the right to construct and operate certain other branches and extensions, with the depot grounds, buildings, machinery and other property to said railroad appertaining, being part of the railroad and property hereby intended to be mortgaged and conveyed;

And whereas, The said New Orleans, Jackson and Great Northern Railroad Company, on or about the twelfth day of June, 1856, motgaged and con- 66
veyed in trust to one James D. Denegre, its road aforesaid, made and to be made, from the City of New Orleans, in the State of Louisiana, to Canton, in the State of Mississippi, with the appurtenances, to secure the payment of certain of its corporate bonds to the extent of three million of dollars;

And whereas, Certain of such bonds were afterwards issued under said mortgage, two thousand nine hundred and forty-one, of which are now 67
outstanding and unpaid, amounting to two millions nine hundred and forty-one thousand ($2,941,000) dollars;

And whereas, Subsequently to the making of said first mortgage, to wit: On the first day of October, 1860, the said New Orleans, Jackson and Great Northern Railroad Company, for the purpose of securing the payment of an additional and subsequent issue of its corporate bonds, to a further
amount, not exceeding three millions of dollars, did 68
also mortgage and convey in trust to the said James D. Denegre its line of road, made and to be made, from the City of New Orleans to Canton, in the State of Mississippi, and from Canton to Aberdeen, in said State of Mississippi, together with the appurtenances;

69 *And whereas*, Certain of such bonds were afterwards issued under said second mortgage, fifteen hundred of which are now outstanding and unpaid, amounting to one million five hundred thousand ($1,500,000) dollars;

And whereas, Afterwards the said New Orleans, Jackson and Great Northern Railroad Company failed to pay the coupons or interest warrants upon said first and second mortgages, and certain of the
70 said coupons, with all liens, rights and equities attaching thereto under said mortgages, were purchased by third parties, to the amount of three hundred and forty thousand ($340,000) dollars of such coupons, due and unpaid upon the said first mortgage, and of one hundred and sixty thousand ($160,000) dollars of such coupons, due and unpaid upon the said second mortgage, of said New Orleans, Jackson and Great Northern Railroad Company.

71 *And whereas*, The said New Orleans, Jackson and Northern Railroad Company, party hereto of the second part, on the fifteenth day of August, 1877, made an issue of its corporate bonds, known as Matured Coupon Bonds, to the extent of five hundred thousand dollars, to provide for the postponement of the payment of the said three hundred and forty thousand dollars ($340,000) coupons due and unpaid upon the first mortgage of the New Orleans, Jackson and Great Northern Railroad Company, and of
72 the said one hundred and sixty thousand dollars ($160,000) coupons due and unpaid upon the second mortgage of the said New Orleans, Jackson and Great Northern Railroad Company; and to further secure said matured coupon bonds, did also mortgage and convey in trust to William H. Gebbard and Lewis V. F. Randolph, both of the city of New York, its line of road, made and to be made,

from the city of New Orleans to Canton in the State of Mississppi ; 73

And whereas, all of such coupons are still unpaid, and said Matured Coupon Bonds are now outstanding, to said amount of five hundred thousand dollars ;

And whereas, a certain corporation known and designated as the Mississppi Central Railroad Company was chartered and incorporated by the Legislature of the State of Mississippi, by an act passed 74
on the tenth day of March, 1852, for the purpose of building and operating a railroad from the town of Canton, heretofore mentioned, in said State of Mississippi, to the north line of said State, and said corporation proceeded in the construction of said railroad ;

And whereas, afterwards, a certain other railroad corporation, known and designated as the Mississippi Central and Tenessee Railroad Company, was 75
chartered and incorporated by an act of the Legislature of the State of Tennessee, passed on the thirtieth day of November, 1853, and was authorized by said act to consolidate and form one corporation with the Mississippi Central Railroad Company, hereinbefore mentioned ;

And whereas, the said State of Tennessee, under and by virtue of its Generai Internal Improvement Laws, and of other acts amendatory thereof and 76
supplementary thereto, thereto, theretofore passed and then in full force, loaned to the said Mississippi Central and Tennessee Railroad Company, or advanced for its benefit Bonds of the State of Tennessee to the aggregate amount of five hundred and seventy-four thousand ($374,000) dollars, by virtue of which Bonds and upon the issuance thereof

under and pursuant to the statutes authorizing such issuance of Bonds, the said State of Tennesssee became invested, without deed from the Railroad Company, with a lien in the nature of a mortgage upon the entire Road built or to be built by said corporation in the State of Tennessee, with all its equipments and appurtenances, prior to any mortgage made or to be made by the said corporation, as security to indemnify and save harmless the said State, on account of the issuance and for the payment of the principal and interest of its said Bonds so issued to said corporation ;

And whereas, afterwards and in pursuance of certain acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, the said Mississippi Central and Tennessee Railroad Company and the said Mississippi Central Railroad Company were consolidated and made into one corporation, under the name of the Mississippi Central Railroad Company, by the agreement and consent of the Stockholders thereof, and were authorized to continue and complete the construction of the Railroad from Canton in the State of Mississippi aforesaid, through the States of Tenessee and Kentucky, to a point on the Ohio River opposite to Cairo in Illinois, and to operate the same, and the said corporation, thereafter known as the Mississippi Central Railroad Company, did proceed to construct and to operate said Railroad ;

And whereas, under and by virtue of the acts aforesaid, and certain other acts of the Legislature of the State of Tennessee, certain other Bonds of said State to the amount of $550,000, were issued to the said Mississippi Central Railroad Company, for the purpose of aiding in the construction and completion of the said Road in the State of Tennessee, and previous to the construction and

completion thereof, and under and by virtue of the 81
General Internal Improvement Laws, and the acts amendatory thereof and supplementary thereto, pursuant to which said bonds were issued, a lien was reserved to the said State upon the entire road in the State of Tennessee—with all its superstructure, equipments and appurtenances, and all property owned by the Company, and all depots and stations, and assets attached thereto, lying within the limits of said State, in the nature of a mortgage lien, without deed, prior to the lien of any mort- 82
gage executed or to be executed by the said Company, to indemnify and save harmless the said State of Tennessee, for the issuance and against the payment of the principal and interest of the said last mentioned amount of five hundred and fifty thousand dollars of its Bonds, so as aforesaid issued to or for the benefit of the said Mississippi Central Railroad Company;

And whereas, said Mississippi Central Railroad Company having been made to pay and re-imburse 83
to the said State of Tennessee, a certain amount of the interest which had accrued, and which the State had paid upon its Bonds so as aforesaid issued to the Mississippi Central and Tennessee Railroad Company, certain acts were passed by the Legislature of the State of Tennessee, by which the balance due from the Mississippi Central Railroad Company for such interest, having been paid by the said State of Tennessee by issuing other of its Bonds, was charged as principal, and in all respects 84
the said State was entitled by virtue of the payment thereof, and the issuance of said Bonds therefor, to the same rights and liens for the same which were created by the acts authorizing the original issue of the Bonds to said Railroad Companies; which interest, so converted into principal, and for which the said State of Tennessee, became and is entitled to a

like first lien upon the Railroad and property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty ($75,180) dollars.

And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee and its assigns, as hereinafter mentioned, became entitled to, and does hold a first and paramount lien in the nature of a first mortgage upon all the property which was of the said Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety-nine thousand one hundred and eighty ($1,199,180) dollars besides interest;

And whereas, by an Act of the Legislature of said State of Tennessee, passed on the twenty-fifth day of February, 1869, and by other acts amendatory thereof and supplementary thereto, it was enacted, among other things, that the respective Railroad Companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of such indebtedness in the Bonds of the State, and that any such Railroad Company repaying any such indebtedness, might issue Bonds to an equal amount with the Bonds of the State paid and delivered up as thereby provided, which said Bonds so issued in lieu of any equal amount of said State Bonds, should be certified by the Comptroller of said State, and should be and possess a lien *pro rata* in amount and of equal validity and effect with the State indebtedness upon such Railroad, and all its property within the State of Tennessee; and farther, that any person or persons, with the consent and approbation of any Railroad Company which should be indebted to the State of Tennessee, and

upon whose property the State of Tennessee might 89
hold a lien, might pay the said State debt, so far as the State is concerned, in the Bonds of the State, or any coupons of Bonds at par, and the person or persons so paying the debt of such Railroad Company, with the consent of such Company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said Railroad or its property, and the same right and power to enforce the same which the State of Tennessee had ; 90

And whereas, in and by a Decree of the Circuit Court of the United States for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, and for authority and direction to sell and convey the Railroad and franchises of the said Mississippi Central 91
Railroad Company, in satisfaction of said consolidated mortgage, it was by the said Court ordered, adjudged and decreed, that the said Trustees and their assigns are entitled, as representing the said Mississippi Central Railroad Company, to settle the claim and take and receive a transfer of the lien of the State of Tennessee ;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company has become the as- 92
signee and grantee of said Trustees in said decree named, and of all their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges and franchises, with the right in case of payment of said Tennessee Bonds to issue and sub-

like first lien upon the Railroad and property of the Mississippi Central Railroad Company within said State, amounts to seventy-five thousand one hundred and eighty ($75,180) dollars.

And whereas, by virtue of the payments or advances aforesaid, the State of Tennessee and its assigns, as hereinafter mentioned, became entitled to, and does hold a first and paramount lien in the nature of a first mortgage upon all the property which was of the said Mississippi Central Railroad Company, so called after the consolidation aforesaid, within the said State of Tennessee, to the extent and amount of one million one hundred and ninety-nine thousand one hundred and eighty ($1,199,180) dollars besides interest;

And whereas, by an Act of the Legislature of said State of Tennessee, passed on the twenty-fifth day of February, 1869, and by other acts amendatory thereof and supplementary thereto, it was enacted, among other things, that the respective Railroad Companies, or either of them that had created indebtedness to the said State, were authorized to repay any amount of the principal of such indebtedness in the Bonds of the State, and that any such Railroad Company repaying any such indebtedness, might issue Bonds to an equal amount with the Bonds of the State paid and delivered up as thereby provided, which said Bonds so issued in lieu of any equal amount of said State Bonds, should be certified by the Comptroller of said State, and should be and possess a lien *pro rata* in amount and of equal validity and effect with the State indebtedness upon such Railroad, and all its property within the State of Tennessee; and farther, that any person or persons, with the consent and approbation of any Railroad Company which should be indebted to the State of Tennessee, and

upon whose property the State of Tennessee might 85
hold a lien, might pay the said State debt, so far as the State is concerned, in the Bonds of the State, or any coupons of Bonds at par, and the person or persons so paying the debt of such Railroad Company, with the consent of such Company, should be entitled to have and hold all the lien or liens which the State of Tennessee had or has, upon said Railroad or its property, and the same right and power to enforce the same which the State of Tennessee had ; 90

And whereas, in and by a Decree of the Circuit Court of the United States for the District of Tennessee, made and entered at Memphis, on the sixth day of January, 1877, in a suit in Chancery commenced by the Trustees of the consolidated mortgage of the Mississippi Central Railroad Company hereinafter mentioned, for the foreclosure of said mortgage, and for authority and direction to sell and convey the Railroad and franchises of the said Mississippi Central 91
Railroad Company, in satisfaction of said consolidated mortgage, it was by the said Court ordered, adjudged and decreed, that the said Trustees and their assigns are entitled, as representing the said Mississippi Central Railroad Company, to settle the claim and take and receive a transfer of the lien of the State of Tennessee ;

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company has become the as- 92
signee and grantee of said Trustees in said decree named, and of all their rights and privileges in that behalf, and also the successor as hereinafter stated of said corporation known as the Mississippi Central Railroad Company, and of all its powers, rights, privileges and franchises, with the right in case of payment of said Tennessee Bonds to issue and sub-

stitute its own bonds with all the liens and rights held by the State of Tennessee;

And whereas, the said party of the first part by virtue of the premises, is invested with the rights, powers, faculties and property of the Trustees aforesaid, under said deed of trust, and the decrees of the said Court above mentioned, and also possessed of the property described in said deed and decree subject to the mortgages and liens thereon, and by reason thereof is interested to settle with the State of Tennessee the debt created by the advance of its said Bonds in the manner authorized by said State; and, in order to maintain and continue the lien created by the acts aforesaid, and reserved and held by the State of Tennessee on said property within said State, so as to enable said Company to effect such settlement, the said Chicago, St. Louis and New Orleans Railroad Company, by Resolution of its Board of Directors, duly consented, and has filed such consent, executed under its corporate seal, in the office of the Treasurer of said State of Tennessee, that the said parties of the fourth part,—as Trustees for the Bonds to be issued in substitution for said Tennessee State Bonds, as hereinafter set forth, or the purchasers and holders of such bonds,—may make payment of such State Bonds to the State of Tennessee, according to said Statutes, and may receive agreeably to the same a transfer of the lien of said State, and so become invested as authorized by said acts, with the first lien upon all said Railroad and property in the State of Tennessee, theretofore held by said State as aforesaid, and have and hold all the liens of said State and all right and power to enforce the same, which the State of Tennessee has or had, so that the holders of said Bonds and the said Trustees in their behalf shall be placed in the same position in all respects and have all the

rights, and the same power to enforce the same, which the State of Tennessee has or had before such transfer;

And whereas, the said Mississippi Central Railroad Company, for the purpose of improving and completing its Line of Railroad, on or about the first day of November, 1854, made and executed a mortgage or deed of trust to Charles Butler, Azariah C. Flagg and Jacob Thompson, to secure the payment of its corporate Bonds to an amount not to exceed one million three hundred and fifty thousand ($1,350,000) dollars, whereby it mortgaged and conveyed all its Railroad constructed, or to be constructed in the State of Mississippi, with its property and appurtenances;

And whereas, Bonds were issued under said Mortgage, and are now outstanding and unpaid to an amount not precisely and accurately known, but not exceeding nine hundred and ninety-two thousand ($992,000) dollars;

And whereas, subsequently to the making and execution of said first mortgage, to wit, on the first day of November, 1865, the said Mississippi Central Railroad Company, made and executed a second mortgage or deed of trust to Jacob S. Rogers, M. P. Mathison and William L. Sharkey, for the purpose of securing the payment of an additional issue of its corporate Bonds, to an amount not to exceed two millions ($2,000,000) of dollars;

And whereas, Bonds have been issued under said second mortgage, and are now outstanding to an amount which is not definitely accurately known and ascertained, but which does not exceed one million nine hundred and ninety-seven thousand ($1,999,000) dollars;

101 *And whereas*, afterwards, the said Mississippi Central Railroad Company failed to pay certain coupons for interest upon its second mortgage aforesaid, and certain of said coupons were purchased and are now held by third parties, and the holders of certain other of said coupons agreed to extend the time for payment thereof, for which agreement of extension and for the preservation of which rights, certain scrip was issued by said Mississippi Central Railroad Company, which said coupons
102 and scrip and other debts alleged to be liens upon so much of the railroad and property of said corporation as is covered by said second mortgage, amount in all to not more than one million two hundred and twenty-one thousand ($1,221,000) dollars, the precise total thereof not being accurately or definitely known;

And whereas, afterwards, the New Orleans, Jackson and Great Northern Railroad Company, herein-
102 before mentioned, made and executed a certain other mortgage or deed of trust, being a consolidated mortgage upon its entire railroad and property, under which certain bonds were issued; and the said Railroad Company having made default in payment of interest upon its said last mentioned bonds, and thereupon the principal thereof, by virtue of the terms and conditions thereof, and of the mortgage or deed of trust securing the same, having become absolutely and entiely due and payable,
104 such proceedings were had for the foreclosure of said mortgage, that the railroad property, rights and franchises of the said New Orleans. Jackson and Great Northern Railroad Company, were afterwards sold under and by virtue of the power in said mortgage or deed of trust contained, and of a decree in that behalf rendered by the Circuit Court of the United States for the District of Louisiana, and

purchased by and on behalf of certain holders of the 105
bonds of said Company, issued under said consolidated mortgage;

And whereas, afterwards, the said bondholders and purchasers, under and by virtue of statutes of the States of Mississippi and Louisiana, did organize and incorporate themselves by the corporate name and title of the New Orleans, Jackson and Northern Railroad Company, and received a deed and transfer of said Railroad, and became the 106
owners under and according to the statutes aforesaid, of all the rights, franchises, railroad, rights of way, superstructure and other property which had been of the New Orleans, Jackson and Great Northern Railroad Company, with all privileges and immunities appertaining to the property or franchises so sold and purchased, and all powers and franchises of said Company in as full and complete manner as the said New Orleans, Jackson and Great Northern Railroad Company was entitled to the 107
same by law, and as fully and perfectly as if the said New Orleans, Jackson and Northern Railroad Company had been granted a charter of incorporation in the very words of the act or acts under which the New Orleans, Jackson and Great Northern Railroad Company existed, owned and operated its said railroad, and held and exercised its rights, privileges and franchises;

And whereas, also, the said Mississippi Central 108
Railroad Company, hereinbefore mentioned, for the purpose of completing and extending its railroad to the Ohio River, made and executed a certain consolidated mortgage or deed of trust on or about the first day of May, one thousand eight hundred and seventy-two, under which consolidated mortgage or deed of trust, certain bonds or obligations

of the said Mississippi Central Railroad Company were issued :

And whereas, the said Mississippi Central Railroad Company afterwards failed and made default in the payment of its coupons for interest upon said consolidated mortgage bonds ; and thereafter, according to the provisions of said bonds, and of said mortgage or deed of trust securing the same, such proceedings were had that under and by virtue of the power created and conferred by the said mortgage or deed of trust, and in pursuance of decrees rendered in the Circuit Courts of the United States in the Districts of Tennessee, Mississippi and Kentucky, all the property described in said decrees, and in the deed of trust aforesaid, being the railroad of the said Mississippi Central Railroad Company, extending from Canton in the State of Mississippi, through the States of Mississippi, Tennessee and Kentucky, to a point on the Ohio River opposite Cairo, with all franchises, rights, and appurtenances thereto belonging, and all the franchises, rights and privileges of the said corportion were sold by the trustees in said mortgage or deed of trust mentioned, under the direction of a Master appointed by the Court, and purchased by certain holders of the bonds issued under the said mortgage ;

And whereas, afterwards the said bondholders and purchasers, under and in pursuance of acts of the Legislatures of the States of Mississippi, Tennessee and Kentucky, organized and became incorporated for the purpose of holding, owning and operating the said railroad under the name, title and designation of the Central Mississippi Railroad Company, and by virtue of the said acts of the Legislatures aforesaid, and of deeds and conveyances, became, and were invested with the absolute title to said railroad and property, real and personal, and the same right to operate the said railroad in the said

States as the Mississippi Central Railroad Company had, and with all rights, privileges and immunities appertaining to the property and franchises so sold and purchased, and granted and conveyed to them, as fully and completely as the said Mississippi Central Railroad Company was, or had been, and with all the rights, privileges, immunities and franchises held by the said Mississippi Central Railroad Company, by or under any acts of the Legislatures of the States aforesaid, as fully and perfectly as if the said Central Mississippi Railroad Company had been granted a charter of incorporation in the very words of the acts under which the Mississippi Central Railroad Company had existed, and claimed and exercised such powers and privileges ;

And whereas, for the better and more convenient operation of the said railroads, and the protection of the parties interested therein, and in the Bonds secured by said prior mortgages thereon, and in order to form one continuous line of railway from the City of New Orleans aforesaid, to the Ohio River opposite the terminus of the Illinois Central Railroad at Cairo, under a single control and ownership, it was determined and agreed to consolidate and unite the said two Railroad Companies known as the New Orleans, Jackson and Northern Railroad Company and the Central Mississippi Railroad Company, which had so as aforesaid become the owners of the said two railroads, together constituting such continuous line from the city of New Orleans to the Ohio River ;

And whereas, an agreement for such consolidation, dated the 7th day of November, A. D. 1877, has been duly executed by the said two corporations, and ratified and assented to by the stockholders thereof (and has become valid, final and effectual in all the States in which the same is authorized and per-

117 mitted by the statutes thereof, and is intended to be perfected, ratified and confirmed in all the States through which the said railroad passes) in order that the said two corporations may become merged and consolidated in the corporation known as the Chicago, St. Louis and New Orleans Railroad Company, the party hereto of the first part;

And whereas, by virtue of said agreement of consolidation, the corporation, party of the first part to these presents, and known as the Chicago, St. Louis
118 and New Orleans Railroad Company, a corporation formed by the union and consolidation of parties of the second and third parts hereto, is intended to own and operate the Railroad so as aforesaid extending from the City of New Orleans, to the Ohio river opposite Cairo, with all branches and extensions thereof, made or to be made, and with all the appurtenance, franchises and rights of way appertaining thereto, which were of the said two corporations so consolidating, or which heretofore belonged
119 to the corporations hereinbefore mentioned, known as the New Orleans, Jackson and Great Northern Railroad and the Mississippi Central Railroad Companies:

And whereas, the said Chicago, St. Louis and New Orleans Railroad Company, and the parties interested in the said line of Railroad, have been advised and have determined that it is expedient and desirable to consolidate and pro-
120 vide for the existing liens upon the said line of road, or the several portions thereof hereinbefore recited, and to provide in addition the means for continuing and completing, and further equipping and perfecting such line of railroad between New Orleans and the Ohio River as aforesaid, and for that purpose the Directors of said Chicago, St. Louis and New Orleans Railroad Company, at a

meeting held on the eighth day of November, one 121
thousand eight hundred and seventy-seven, did pass certain resolutions of the tenor and effect following:

Resolved, That the President and Treasurer of this Company be authorized to execute from time to time, as shall be required to effectuate the purposes of these Resolutions, thirteen thousand Bonds of this Company, to be numbered consecutively from number one to number thirteen thousand inclusive, each Bond to be for one thousand dollars, payable on 122
the first day of November, one thousand eight hundred and ninety-seven, bearing interest at the rate of seven per cent. per annum, payable semi-annally at the office of the Company in the City of New York, and the interest and principal payable in lawful money of the United States of America; that the President be authorized and instructed to secure the payment of said Bonds and interest thereon by a deed of mortgage, and for that purpose to exe- 123
cute and affix the seal of this Corporation, and his signature as President, to a mortgage or deed of trust of the Railroad and franchises of this Company, including all its personal and real estate, and all its property movable and immovable, now owned or hereafter to be acquired, and its rights and franchises in the States of Louisiana, Mississippi, Tennessee and Kentucky to Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Ten- 124
nessee, and Lewis V. F. Randolph of the City of New York in the State of New York, as Trustees:

Resolved, That numbers one to one thousand one hundred and ninety-nine inclusive of said Bonds, shall be set apart to provide, under the acts of the State of Tennessee, for and to be substituted for the Bonds of the State of Tennessee, issued to the Mis-

sissippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, to be registered and certified pursuant to said statutes of said State of Tennessee, by the Comptroller thereof, and to be issued to the party or parties paying the lien of the State, or to furnish the means to pay and satisfy said lien, and to be entitled to and in fact become, and as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage upon the property of this Company in the State of Tennessee, the same precisely as is now declared to exist in favor of said State, under and by virtue of the statutes thereof in pursuance of which the loan and advance of State Bonds was made to the Company or Companies, of whose rights and property this Company has succeeded, and with all rights, privileges and liens created by said statutes, and all powers to enforce the same originally residing in said State ;

Resolved, That said Bonds from numbers one thousand two hundred, to four thousand one hundred and forty inclusive, shall be reserved and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the purchase or payment of the outstanding first Mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, being two thousand nine hundred and forty-one of said Bonds ;

Resolved, That said Bonds numbered from four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of providing for the payment or purchase of the outstanding second mortgage Bonds of the New Orleans, Jackson and Great Northern

Railroad Company, being one thousand five hundred of said Bonds;

Resolved, That said Bonds numbered from five thousand six hundred and forty-one, to six thousand one hundred and forty inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or of paying and liquidating, the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, and the Matured Coupon Bonds issued to provide for the postponement of the date of payment of the said Coupons, being five hundred of said Bonds;

Resolved, That said Bonds numbered from number six thousand one hundred and forty-one, to seven thousand one hundred and thirty-two inclusive, shall be reserved, and shall be deposited with said Trustees, and shall be used for the purpose of being exchanged for, or cancelling, or providing for the payment or purchase of the outstanding Bonds under the first mortgage of the Mississippi Central Railroad Company, being nine hundred and ninety-two of such Bonds, or so many thereof as shall be needed to cancel and extinguish all of said Bonds, which are outstanding, and are legal and valid obligations;

Resolved, That said Bonds numbered from seven thousand one hundred and thirty-three, to nine thousand one hundred and twenty-nine inclusive, shall be reserved and shall be deposited with said Trustees, and said Bonds or so many thereof as shall be necessary, shall be used for the purpose of being exchanged for, or of providing for the payment and satisfaction of the outstanding Bonds under the second mortgage of the Mississippi Central Railroad

132 Company, which are legal and valid obligations; and none of said Bonds referred to in this or the last resolution. shall be removed from said deposit or used for any other purpose, until the whole of said first and second mortgage Bonds of the said Mississippi Central Railroad Company which are outstanding and valid obligations shall be paid or cancelled;

Resolved, That said Bonds numbered from nine
134 thousand one hundred and thirty to ten thousand three hundred and fifty inclusive, shall be reserved and set apart, and shall be used for the purpose of paying and satisfying the outstanding coupons and scrip, and other liens which may be valid, and prior to this mortgage upon the property, railroad and franchises which were of the said Mississippi Central Railroad Company, until all such liens are cancelled, being one thousand two hundred and twenty-one of said Bonds, or so many thereof as
135 shall be necessary for the purpose of cancelling and satisfying said coupons, scrip and liens;

Resolved, That said Bonds numbered from number ten thousand three hundred and fifty-one to ten thousand eight hundred and fifty inclusive, being five hundred of such Bonds, shall be used and issued to supply the means to take up and pay any remaining prior liens or incumbrances upon the property hereby mortgaged, any deficiency in any of the particular appropriations hereinbefore made,
136 and the general expenses of said trust;

Resolved, That the residue of the Bonds shall be placed in the hands of the said Trustees, and shall be executed by the President of the Company, and certified by the said Trustees only upon expenditures made, or liabilities incurred:

First—In the payment of any coupons now over-

due and not postponed, upon the first and second 137
mortgage Bonds of the New Orleans, Jackson and Great Northern Railroad Company, and upon first mortgage Bonds of the Mississippi Central Railroad Company, not hereinbefore specially provided for; *Second.*—In constructing and improving the line of Railroad of this Company, with its switches, turn-outs, branches, side-tracks and equipments, or for payment of debts, or liabilities already incurred for such construction and improvement; and upon evidence satisfactory being furnished to the 138
said Trustees of the amount required to discharge debts and liabilities incurred, or necessary to incur, in improving, completing and putting the said Railroad in order as a first class railroad, or in procuring additional equipment therefor, they shall deliver to the said corporation, or to purchasers of said bonds so many of the said bonds as they shall deem equivalent to the amount of said expenditures, until the said line from New Orleans to the Ohio river as aforesaid, shall be fully completed 139
and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portion thereof as has been by these resolutions specifically appropriated shall have been delivered to the Company or to the purchasers thereof;

Resolved, That the said mortgage to be executed for the security of the said bonds, shall contain the ordinary provisions and conditions, as shall be ad- 140
vised by counsel, and, generally the following covenants and agreements;

First.—That until default this company shall retain the possession and use of the mortgaged premises;

Second.—That this company will pay and dis-

charge all taxes or assessments which may be imposed upon the mortgaged premises or any part thereof;

Third.—That in case of default in the payment of any of the coupons or interest warrants, on any of the said bonds, as such they respectively become payable, and the continuance of such default for ninety days, or of default in the payment of the principal when the same becomes due or of any breach of any of the conditions or covenants in the said mortgage contained, the said mortgage shall become due and payable at the option of the holders of one million ($1,000,000) dollars of said bonds, and the said trustees as aforesaid or their successors shall upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars of said bonds, and the said trustees as aforesaid or their successors shall, upon demand of the holders of said bonds to the amount of one million ($1,000,000) dollars, enter into and upon said railroad, and operate and use the same, for the benefit of the holders of said bonds, as may be authorized by law, and shall thereafter upon like demand, take proceedings for the foreclosure and sale of the railroad and premises, for the benefit of the holders of said bonds; provided that if this company or its successors or assigns, shall after any such forfeiture has been made or suffered, and the principal of said bonds has been made due in consequence, and before a sale of said premises has been actually had under said mortgage, pay or tender the amount of interest in arrears, with interest thereon, and all costs and expenses incurred in proceeding to foreclose said mortgage, such forfeiture shall be waived, and this company shall be entitled to repossess itself of said property, and such mortgage shall stand as if no default had occurred;

Fourth.—That all the said bonds now authorized 145
to be issued, or which may be sold and negotiated, are upon an equality so far as regards the security, upon the entire property described in such mortgage, and shall be upon like equality in the payment thereof, except the bonds issued in payment or substitution for the bonds of the State of Tennessee, to the amount of one million one hundred and ninety-nine thousand ($1,199,000) dollars, which besides and in addition are by law entitled to, and are to be recognized as holding the first lien in pre- 146
ference to the residue of said bonds, and to all other obligations, mortgages or debts whatever, upon the railroad and property of this corporation, within the limits of the State of Tennessee.

That in case of default in the payment of interest, or of the principal of any of the said bonds to be numbered from number one to number one thousand one hundred and ninety-nine inclusive, and which will bear the certificate of the Comptroller of the State of Tennessee, and will be substituted and 147
issued in exchange for bonds of said State, the said Trustees, upon the request of the holders of five hundred of said bonds, may appoint a Receiver, with the usual powers, rights and duties of Receivers, who shall enter upon and take possession of so much of the railroad and property of this Company as lies within the limits of said State of Tennessee, for and in behalf of said trustees and the holders of said bonds, for the protection and enforcement of the lien of said bonds, as succeeding to said State 148
under the statutes thereof; or the said trustees, upon the like request, may themselves, in case of any such default, enter upon and take possession of all that portion of said railroad and property within the State of Tennessee, as aforesaid, and manage and operate the same, so long as such default shall continue, for the benefit and protection

of the holders of said substituted bonds, in the same manner as a Receiver appointed by a proper Court having jurisdiction; and this Company, upon request of said trustees, in case of such default, will surrender to said trustees, or to the Receiver so appointed by them, the possession of said railroad within the State of Tennessee, and will suffer the use and occupation thereof, so long as such default continues, by or for the benefit of said trustees, or the holders of said substituted bonds;

Fifth.—That all the said bonds, after reservation of those hereinbefore specified, and the proceeds thereof shall be faithfully used and applied to the construction, completion and equipment of the railroad and property, structures and buildings of the said Company, the payment of debts or liabilities already incurred for the same, and of liens and charges prior to the said proposed mortgage;

Sixth.—That whenever and as often as the Company shall acquire any additional land, or other property, the same shall be held and possessed under and subject to the mortgage made to secure the said bonds;

Seventh.—That the Company will, from time to time, if thereunto requested by the trustees named in said mortgage, or their successors, execute and deliver any further deed or assurance for the better assuring and conveying its railroad, and property, and franchises, whether now owned, or hereafter acquired, for the securing of the payment of the principal and interest of said bonds;

Eighth.—That the said trustees or their successors, shall be empowered to make such releases or exchanges of any property, in said mortgage or deed of trust described, and which may not be need-

ed or used for the track, buildings or other purposes of said road, as may be expedient, upon condition that the net proceeds of all property so released, shall be used only in the purchase of other property or equipment for the road, or in the payment of said bonds or obligations, and that all property taken in exchange shall become subject to said mortgage in like manner with the property exchanged ;

And whereas to make the assurance and security of this mortgage and deed of trust complete, and to remove any question that it will create a perfect lien upon the whole of said line of railroad, from New Orleans to the Ohio River, as aforesaid, and upon all the property, estate, franchises and interests which were at any time heretofore owned, or exercised or operated by the said New Orleans, Jackson and Great Northern Railroad Company or said Mississippi Central Railroad Company, the Corporation known as the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company, parties of the second and third parts hereto, have agreed and the respective Boards of Directors thereof have authorized and directed, that the said Corporations should unite in the execution of this mortgage or deed of trust, to secure the bonds to be issued as hereinbefore mentioned.

Now this indenture witnesseth that the said parties of the first, second and third parts, in consideration of the premises, and for securing payment of the bonds to be made and executed to the amount of thirteen millions of dollars, in lawful money of the United States, as hereinbefore mentioned, and the interest to accrue thereon, and in consideration of the sum of ten dollars lawful money of the United States, unto them well and truly paid

157 by the parties of the fourth part, the receipt where-
of is hereby acknowledged, have granted, bargained,
sold, released, confirmed, assigned, transferred, and
set over, and by these presents do grant, bargain,
sell, release, confirm, assign, transfer and set over
unto the said parties of the fourth part, and their
lawful successors in the trust hereby created, all and
singular the Railroad aforesaid, with its appurten-
ances, depots, depot grounds, branches, furniture
and equipments, and all and every right, title or
158 interest which said parties of the first, second, or
third parts, or either of them, had or has, or shall
hereafter acquire in, or to the same, being the line
of Railroad formerly known, in part as the New
Orleans, Jackson and Great Northern Railroad, and
in part as the Mississippi Central Railroad, and sub-
sequently, by the consolidation of said two Com-
panies, as the New Orleans, St. Louis and Chicago
Railroad, and now intended to be owned and oper-
ated as one continuous line of railroad, from New
159 Orleans to a point at or near Fillmore, upon the
Ohio River opposite Cairo, by the said party of the
first part, with all its branches, extensions and ap-
purtenances, and with all the real estate now owned
by the said party of the first part, or by the said
parties of the second and third parts, or either of
them, or which may hereafter, for the purposes of
said railroad, be owned or acquired by said party of
the first part, and all rights of way, rails, tracks,
workshops, machinery, depots, depot grounds, im-
160 provements, tenements, and hereditaments, now
owned by said parties of the first, second and
third parts, or either of them, or hereafter to be ac-
quired by said party of the first part, its successors
or assigns, for the construction, operation and man-
agement of the said railroad: together with all
rolling stock, locomotives, tenders, cars and equip-
ments, machinery, tools, implements and materialt,

and all and singular the other personal property of every kind, nature and description, belonging to said party of the first part, or to the said parties of the second and third parts, now or hereafter in use, or intended for use upon the said railroad, or in connection with the proper equipment and operation of the same, and also all and singular the corporate rights, power and privileges, and franchises of the said party of the first part, now owned and possessed, or which may hereafter be required for the construction, maintainance and operation of said railroad, or connected with or relating to the same, and all the like corporate powers, rights, privileges and franchises of the said parties of the second and third parts, either of them, so owned and possessed, or which may be acquired by them or either of them, with all rights, privileges and appurtenances whatsoever, affecting any of the hereby granted and mentioned premises and estates, or thereunto belonging, and all the estate, right, title, interest, claim and demand whatsoever of the said party of the first part, or of the said parties of the second and third parts, either at law or in equity, of, in to and the same and every part and parcel thereof.

To have and to hold the same, with the appurtenances, unto the said parties of the fourth part, their successors and assigns, in trust for the use, benefit and security of the several persons and their successors, administrators, executors, or assigns, who shall hereafter become the owners and holders of any of the bonds to the amount of thirteen million ($13,000,000) dollars, intended to be hereby secured, subject, however, to the right of the party of the first part, its successors and assigns to retain the free and uncontrolled use, enjoyment, possession and management of the premises hereby granted, or intended so to be, until by reason of default by said party of the first part, in keeping and performing

the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession of, or sell the said premises as hereinafter set forth ;

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become interested as holders, or owners of the bonds intended to be secured hereby, in manner following, that is to say ;

First.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid, intended to be secured hereby, or any that may be issued and accepted in lieu or renewal or substitution of the same respectively, interest thereon semi-annually, as the same shall become due and payable, according to the terms of said bonds and the coupons attached thereto, on the days and at the place therein respectively mentioned ; and also on the day and at the place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof, become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest, without deduction from either said principal or interest for any tax, levy or assessment imposed upon the premises, franchises and property hereby conveyed, or upon the principal or interest of said bonds, either by the United States of America, or by the States of Louisiana, Mississippi, Tennessee and Kentucky, or either of them ;

Second.—That if the party of the first part, its successors or assigns, shall at any time hereafter, after

demand made, make default or refuse, neglect or 169
omit, for any period exceeding three (3) months, to
pay the semi-annual interest on the bonds intended
to be hereby secured, or any of them, or any inter-
est-warrant, or coupon, issued for the payment
thereof, or shall, after demand made, make default
or refuse or neglect or omit, for any period exceed-
ing three (3) months, after their maturity, to pay
the principal sums of each, and all of the said bonds
intended to be hereby secured, or of any of them,
then, and in the first case of default in the payment 170
of interest hereinabove stated, and upon demand of
the holders of said bonds to the amount of one mil-
lion ($1,000,000) dollars, the whole principal sum of
the said bonds, shall forthwith become due and
payable, anything in the said bonds, or in these
presents to the contrary notwithstanding, and in
such case, or in the case of default in the payment
of principal of any of the said bonds, for three
months after maturity of the same, the said trus-
tees or trustee, for the time being, upon the written 171
request of the holders of one million ($1,000,000) dol-
lars in amount of the said bonds then outstanding,
shall enter upon, and take possession of the rail-
road, estates, real and personal, and premises here-
by mortgaged, or agreed, or intended so to be, and
operate, use manage and control the said railroad
and premises to the best advantage, and appro-
priate the net income and proceeds derived there-
from, over and above running expenses, and inter-
est on prior incumbrances, after deducting the ex- 172
penses of this trust, and any sum which may be ne-
cessary to indemnify said trustees or trustee, for
any liability, loss, or expenditure, for or on account
of any matter, or thing done by him, or them in
good faith, in pursuance of his or their duty as
such trustees, to the payment in full without pre-
ference—first of the interest, secondly of the prin-

the covenants and agreements in this Indenture contained, or any of them, the said parties of the fourth part are, as hereinafter provided, authorized to enter upon and take possession of, or sell the said premises as hereinafter set forth ;

And it is hereby expressly covenanted and agreed by and between the parties hereto, covenanting and agreeing for themselves and their successors and assigns, and for all parties who shall become interested as holders, or owners of the bonds intended to be secured hereby, in manner following, that is to say ;

First.—That the said party of the first part, its successors and assigns, will punctually pay the holders of the bonds aforesaid, intended to be secured hereby, or any that may be issued and accepted in lieu or renewal or substitution of the same respectively, interest thereon semi-annually, as the same shall become due and payable, according to the terms of said bonds and the coupons attached thereto, on the days and at the place therein respectively mentioned ; and also on the day and at the place mentioned in said bonds, and whenever the principal sum of the same, or any of them, shall, according to the provisions thereof, become due and payable, will fully and entirely pay off and satisfy the whole of said bonds, principal and interest, without deduction from either said principal or interest for any tax, levy or assessment imposed upon the premises, franchises and property hereby conveyed, or upon the principal or interest of said bonds, either by the United States of America, or by the States of Louisiana, Mississippi, Tennessee and Kentucky, or either of them ;

Second.—That if the party of the first part, its successors or assigns, shall at any time hereafter, after

demand made, make default or refuse, neglect or 169
omit, for any period exceeding three (3) months, to
pay the semi-annual interest on the bonds intended
to be hereby secured, or any of them, or any inter-
est-warrant, or coupon, issued for the payment
thereof, or shall, after demand made, make default
or refuse or neglect or omit, for any period exceed-
ing three (3) months, after their maturity, to pay
the principal sums of each, and all of the said bonds
intended to be hereby secured, or of any of them,
then, and in the first case of default in the payment 170
of interest hereinabove stated, and upon demand of
the holders of said bonds to the amount of one mil-
lion ($1,000,000) dollars, the whole principal sum of
the said bonds, shall forthwith become due and
payable, anything in the said bonds, or in these
presents to the contrary notwithstanding, and in
such case, or in the case of default in the payment
of principal of any of the said bonds, for three
months after maturity of the same, the said trus-
tees or trustee, for the time being, upon the written 171
request of the holders of one million ($1,000,000) dol-
lars in amount of the said bonds then outstanding,
shall enter upon, and take possession of the rail-
road, estates, real and personal, and premises here-
by mortgaged, or agreed, or intended so to be, and
operate, use manage and control the said railroad
and premises to the best advantage, and appro-
priate the net income and proceeds derived there-
from, over and above running expenses, and inter-
est on prior incumbrances, after deducting the ex- 172
penses of this trust, and any sum which may be ne-
cessary to indemnify said trustees or trustee, for
any liability, loss, or expenditure, for or on account
of any matter, or thing done by him, or them in
good faith, in pursuance of his or their duty as
such trustees, to the payment in full without pre-
ference—first of the interest, secondly of the prin-

cipal of all the aforesaid bonds then outstanding, if said income and proceeds be sufficient, but if not, then *pro rata*, subject only to the prior rights, lien and preference to which the holders of the bonds to be issued, as hereinafter mentioned, in substitution for the bonds of the State of Tennessee, shall be entitled in the application of the net income and proceeds of so much of the said railroad as lies within the boundaries of said State of Tennessee; and the said trustees or trustee shall also, in case of such default, after, or without entering upon and taking such possession, upon the written request of holders of a like amount of said bonds then outstanding, proceed to sell the said railroad, estate real and personal, corporate rights and franchises, and all the premises hereby mortgaged, or agreed, or intended so to be, to the highest bidder, at public sale, in the city of New York, first giving at least three months' notice of such intended sale, by publication, to be made twice in each week, in at least two daily newspapers published in the city of New York, and in one daily newspaper published in the city of New Orleans, and in one newspaper published in each of the said States of Mississippi, Tennessee and Kentucky, and convey the same to such purchaser or purchasers, free from all and every the trusts hereby created, and without liability to see to the application of the purchase money. And the said parties of the fourth part, their survivor or survivors, successor or successors in the trust for the time being, shall execute and deliver to the purchaser or purchasers a deed of the premises, which shall convey to him or them a full, valid, and indefeasible title to the said railroad, franchises and rights, and all the estate, real and personal property, movable and immovable, herein described, and hereby mortgaged and conveyed, or intended so to be, which shall be a

perpetual bar to any claim or demand thereto, or 177
to any part thereof, by the said parties of the first, second or third part, or their successors, or any person claiming or to claim, under them. or either of them. And the said parties of the first, second and third parts, for themselves, their successors or assigns, covenant, promise and agree, to and with the said parties of the fourth part, their survivor or survivors, successor or successors, and assigns, and their grantees, under any such conveyance, that they will never claim any right, title, interest or 178
equity in or to any portion of the mortgaged premises, in bar opposition or impeachment of the title passed thereby. Or the said parties of the fourth part, their survivors, successors or assigns, may, in their discretion, in case of any default in any of the covenants or conditions herein, foreclose the equity of redemption of the said parties of the first, second and third parts, and of all other persons having any legal or equitable rights, or claims, in or to the mortgaged premises, or any part or parcel thereof, 179
by any proceedings in law or in equity provided for by the respective States, in which portions of the said railroad are built, and in the Courts of such States, or in the proper Courts of the United States of America, having jurisdiction thereof;

And the said parties of the fourth part, in case of the sale of said premises under and by virtue of the power hereby granted and created, shall and will appropriate the purchase money thereof, after such 180
deductions made for the expenses of the Trust and of such sale, and indemnity to the Trustees as aforesaid, to the payment as aforesaid—*first*—of the interest due on, and,—*secondly*,—of the principal of the said outstanding Bonds, in full if said purchase money be sufficient but, if not, then *pro rata* and without preference, excepting only the

proceeds of so much of the said Railroad, and property as is situated within the State of Tennessee, and to which the holders of the substituted bonds certified by the Comptroller of said State, are entitled in preference as herein agreed: *Provided*, however, that if the said party of the first part, its successors or assigns, shall in case of any such default in the payment of such interest, or of any interest upon prior mortgages, hereinafter covenanted to be paid or provided for, at any time before a sale has been actually made, either under the power of sale herein contained or under the decree of any Court or Courts, pay or tender to said parties of the fourth part, or their successors, or to the parties entitled thereto, the amount of interest so in arrear with interest thereon, from the time of default, and all costs, counsel fees, commissions and expenses incurred in the proceedings for such sale, or in taking possession of and operating said railroad by said parties of the fourth part, any such default and forfeiture shall be opened, and the said party of the first part, its successors or assigns, shall resume possession of said railroad and premises, and all parties hereto shall be restored to their first rights, the said default and consequent proceedings notwithstanding, and as if the same had not occurred; and in the event of there being in the hands of the said Trustees any portion of the Trust Estate, or of the proceeds thereof, after payment in full of the principal and interest of the aforesaid bonds, the said Trustees shall reconvey or pay over the same to the party of the first part, its successors or assigns.

Third.—That the bonds to be issued under and by virtue of this mortgage, or deed of trust, and to be secured by it, shall be bonds of one thousand dollars each, and of the tenor and effect following:

UNITED STATES OF AMERICA. 185

States of Louisiana, Mississippi, Tennessee and Kentucky.

No.....

Chicago, St. Louis and New Orleans Railroad Company, First Mortgage Seven per cent. Loan.

The Chicago, St. Louis and New Orleans Railroad Company, acknowledges itself indebted to the bearer in the sum of one thousand dollars, which it 186
promises to pay in lawful money of the United States, on the first day of November, in the year one thousand eight hundred and ninety-seven, at its office in the City of New York, and to pay interest thereon at the rate of seven per cent. per annum, payable semi-annually at said office, in like lawful money, upon presentation and surrender of the interest warrants or coupons hereto annexed, on the first days of May and November, in each year, as they respectively become payable, so long as the 187
principal remains unpaid, without deduction for State or United States taxes.

This is one of thirteen thousand bonds of similar amount, tenor and date, referred to in a mortgage made by the said Chicago, St. Louis and New Orleans Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central Mississippi Railroad Company to Adolph Schreiber of the City of New Orleans, in the State 188
of Louisiana, James Fentress of Bolivar, in the State of Tennessee, and Lewis V. F. Randolph of the City of New York, in the State of New York, Trustees, dated the eighth day of November, 1877, to secure the payment of such bonds, and when the certificate hereon endorsed, is subscribed by said Trustees, it will be secured thereby.

189 In witness whereof the said Chicago, St. Louis and New Orleans Railroad Company, has caused its common seal and the signatures of its President and Secretary, to be hereto affixed the eighth day of November, 1877.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

W. H. OSBORN,
President.

190 STUYVESANT FISH,
Secretary.

ENDORSEMENT.

The within is one of thirteen thousand bonds of one thousand dollars each, secured by a mortgage made by the Chicago, St. Louis and New Orleans Railroad Company, and the New Orleans, Jackson and Northern Railroad Company, and the Central
191 Mississippi Railroad Company, to the undersigned as Trustees, dated the 8th November, 1877, and has been duly issued in pursuance of the trust created and conditions contained in said mortgage.

November 8th, 1877.

ADOLPH SCHREIBER,
JAMES FENTRESS,
LEWIS V. F. RANDOLPH. } Trustees.

Fourth.—That the said bonds to be issued under this mortgage, numbered from number one to num-
192 ber one thousand one hundred and ninety-nine, inclusive, shall be set apart, issued to, or used by said party of the first part, or persons acting with its consent and authority, to provide and be substituted for the bonds of the State of Tennessee, heretofore issued to the Mississippi Central and Tennessee Railroad Company and to the Mississippi Central Railroad Company, and shall be registered and

certified, pursuant to the statutes of the State of 193
Tennessee, by the Comptroller thereof, and such bonds of the aforesaid numbers so certified shall be entitled to and in fact become, as provided by the acts of the State of Tennessee aforesaid, a lien in the nature of a first mortgage, prior to the lien of the residue of the bonds secured hereby, and to all other mortgages and liens whatever upon the property of the said parties of the first and third parts, in the State of Tennessee; and in case of any default in the payment of interest upon the bonds 194
hereby secured, or any of them, or of default in the payment of the principal sum at their maturity, and of possession being taken or a foreclosure and sale had by the trustees as herein provided, the holders of said bonds, numbered from number one to number one thousand one hundred and ninety-nine, issued under this mortgage, besides and in addition to their rights in common with other bondholders in the residue of said property and its proceeds, shall be entitled to priority in the appropriation of such in- 195
come and proceeds so far as the same shall be derived from the portion of the said railroad hereby mortgage within the limits of said State of Tennessee, as well as to an equal and *pro rata* share in the income and proceeds of the residue of said mortgaged property with the residue of the bonds secured hereby.

Fifth.—That the said bonds to be issued under this mortgage, numbered from number one thousand 196
two hundred to number four thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of purchasing, or of being exchanged at par for the outstanding mortgage bonds heretofore issued by the New Orleans, Jackson and Great Northern Railroad Company, which are a

prior lien upon the railroad and property heretofore owned and operated by the same. And the said two thousand nine hundred and forty-one bonds shall be used and employed for no other purpose whatever, until the maturity of such outstanding bonds of said New Orleans, Jackson and Great Northern Railroad Company, which may not be so exchanged, whereupon the said party of the first part may sell the same under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, or when all of them shall be paid, any unsold bonds then remaining shall be delivered to the said party of the first part;

Sixth.—That said bonds to be issued under this mortgage, numbered from number four thousand one hundred and forty-one to five thousand six hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par, or sold to pay or redeem or purchase the outstanding second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad Company, hereinbefore mentioned. And said one thousand five hundred bonds shall be used and employed for no other purpose whatever until the maturity of said outstanding second mortgage bonds which may not be so exchanged, whereupon said party of the first part may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid, and if there shall remain none unpaid, and when all of them shall be paid, any of said one thousand five hundred bonds, then remaining, shall be delivered to said party of the first part;

Seventh.—That the said bonds to be issued under 201
this mortgage, numbered from number five thousand six hundred and forty-one, to number six thousand one hundred and forty inclusive, shall be reserved and deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for, or of paying and liquidating the outstanding and unpaid coupons under said first and second mortgages of said New Orleans, Jackson and Great Northern Railroad Company, provided for by the matured coupon bonds and mort- 202
gage of the New Orleans, Jackson and Northern Railroad Company, until said coupons or said matured coupon bonds, shall be fully paid and satisfied or cancelled; and if there shall then remain any of said five hundred bonds, after all such coupons shall be paid or cancelled, the same shall be returned and delivered to the party of the first part;

Eighth.—That the said bonds to be issued under
this mortgage, numbered from number six thou- 203
sand one hundred and forty-one, to number seven thousand one hundred and thirty-two, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and shall be used for the purpose of being exchanged at par for, or of furnishing the means to pay and cancel or purchase the outstanding bonds under the first mortgage of the Mississippi Central Railroad Company, hereinbefore mentioned; and said nine hundred and ninety-two bonds shall be used and employed for no other 204
purpose whatever, until the maturity of said outstanding first mortgage bonds of the Mississippi Central Railroad Company which shall not be so exchanged, which are legal and valid obligations against said Company, and entitled to a lein upon the premises mortgaged hereby or some portion thereof formerly owned by said Company; where-

upon the said party of the first part may sell the same under the direction of the parties of the fourth part and apply the proceeds to the payment of any such outstanding bonds then unpaid, which are legal and valid obligations as aforesaid; and if there shall remain none unpaid, and when all of them shall be paid, any of said nine hundred and ninety-two bonds then remaining shall be delivered to the said party of the first part;

Ninth.—That said bonds be issued under this mortgage, to be numbered from number seven thousand one hundred and thirty-three to number nine thousand one hundred and twenty-nine, inclusive, shall be reserved, and shall be deposited with said parties of the fourth part, and said bonds shall be used for the purpose of being exchanged at par, or providing for the payment and satisfaction or purchase as herein directed, of the outstanding bonds under the second mortgage of the said Mississippi Central Railroad Company, which are valid and legal obligations, and a lien upon the property and premises hereby mortgaged, or some portion thereof heretofore owned by said Company. And the said one thousand nine hundred and ninety-seven bonds, or so many thereof as shall be necessary, shall be used for the purpose of being exchanged, or providing for the payment and satisfaction of the outstanding bonds, under the second mortgage of the Mississippi Central Railroad Company, which are legal and valid as aforesaid, and for no other purpose whatever, until the maturity of any of said outstanding bonds, which may be so exchanged; whereupon said party of the first part, may sell the same, under the direction of the parties of the fourth part, and apply the proceeds to the payment of such outstanding bonds then unpaid; and whenever shall remain none of said bonds unpaid, and

when all of them shall be paid and exchanged, any of said one thousand nine hundred and ninety-seven bonds then remaining, shall be delivered to the said party of the first part;

Tenth—That the said bonds to be issued under this mortgage, to be numbered from number nine thousand one hundred and thirty, to ten thousand three hundred and fifty, inclusive, shall be reserved and set apart, and shall be used for no other purpose, than for paying and satisfying, or for the purpose of purchasing or being exchanged for the outstanding coupons and scrip issued for interest upon the first and second mortgages of which may be valid and prior to this mortgage, upon the property and franchises of said Company, until all said outstanding coupons, scrip and other liens, upon said property of the said Mississippi Central Railroad Company, shall be fully paid, satisfied, and canceled, when any of said one thousand two hundred and twenty-one bonds remaining unsold, or unissued, shall be delivered to the said party of the first part.

Eleventh.—That the said bonds to be issued under this mortgage, and numbered from number ten thousand three hundred and fifty-one to number ten thousand eight hundred and fifty inclusive, shall be used and issued from time to time to supply the means to pay each or any of the prior liens or incumbrances upon said premises hereby mortgaged, or any portion theref and the general expenses of the trust hereby created, and of the cancelling and satisfaction of the debts and liens referred to;

Twelfth.—That the residue of the bonds to be issued under this mortgage, numbered from number ten thousand eight hundred and fifty-one to number thirteen thousand inclusive, shall be

used—First, to provide funds for the payment of coupons overdue and not postponed, upon the first and second mortgage bonds of the New Orleans, Jackson and Great Northern Railroad, and upon the first mortgage bonds of the Mississippi Central Railroad Companies, and not otherwise herein specifically and sufficiently provided for, and other debts and liens prior to this mortgage; Second, for the construction, completion and improvement of the line of railroad of the party of the first part, and its equipment, and for the payment of debts, or liabilities incurred for the same, and to put the said railroad in order as a first-class railroad, with sufficient equipment to operate the same. And upon evidence being furnished to the parties of the fourth part, or their successors, that any expenditure has been made, or liability incurred for such construction or improvement, since the tenth day of March, 1876, they shall deliver to the said party of the first part, or to the purchasers of the said bonds, so many of said bonds, or the proceeds therof, as shall be equivalent to the amount of such overdue coupons so paid, or of such expenditures so made or incurred, until all such debts, liens and coupons shall be fully paid, and until the said line from New Orleans to the Ohio River, as aforesaid, shall be fully completed and equipped as a first-class railroad, or until the whole number of the said thirteen thousand bonds, after applying such portions as have been heretofore by these presents specifically appropriated, shall have been delivered to the said party of the first part, or to the purchasers thereof;

And the said party of the first part, for itself, its successors and assigns, doth covenant and agree with the said parties of the fourth part and their successors, and to and with the holders of the bonds

to be issued and secured under this mortgage, that they will at all times, until the existing mortgages hereinbefore mentioned, upon the property hereby mortgaged, or certain portions thereof, shall have been extinguished by the substitution of the bonds hereby secured, for the bonds issued under said prior mortgages, or by the payment thereof, keep, pay, and discharge any and all interest which shall become due and payable, upon the bonds secured by said prior mortgages. And that all the said bonds to be issued under and secured by this Indenture, after reservation of those hereinbefore specified, and the proceeds thereof, shall be faithfully used and applied to the construction, completion and equipment of the railroad property, structures and buildings of the said party of the first part, and to the payment of liens and charges thereon, as aforesaid;

And the parties aforesaid, for themselves, their successors and assigns, do respectively further covenant, promise and agree that, in case default shall at any time be made in the payment of any interest upon any of the said bonds numbered from number one to number one thousand one hundred and ninety-nine inclusive, which will bear the certificate of the Comptroller of the State of Tennessee, and will be bonds substituted or issued in exchange for the bonds of said State, or in the payment of the principal of said bonds at their maturity, and provided the holders of five hundred of said bonds, shall in writing request or demand the same, the said parties of the fourth part, or their successors, may and will appoint a suitable person to take possession of so much of said road and its appurtenances, as lie within the limits of the State of Tennessee, and are subject to the prior and special lien of the bonds aforesaid with the

usual powers and duties of a Receiver, and in like manner as the Governor of said State under the statutes thereof, would appoint such Receiver, if the State had continued to hold its lien without transfer of the same;

Or in the event of any such default, and upon the like request of the holders of five hundred of said bonds, the said Trustees may and will themselves enter upon, and take possession of said road, and its appurtenances, within the State of Tennessee aforesaid, and operate and manage the same, and apply the net earnings thereof to the payment and satisfaction of the interest, or the principal of said bonds, so in arrears, in like manner, and with the same rights, powers and duties as would be possessed and exercised by a Receiver, who should be appointed by a Court of competent jurisdiction in such a case. And the said party of the first part, its successors and assigns, in case of such default, upon the request, or demand of said parties of the fourth part or their successors, will forthwith surrender to said parties of the fourth part, or their successors, or to the agent or Receiver, appointed by them, the possession and control of said railroad, within the State of Tennessee, in the same manner as they would surrender the same to a Receiver appointed by a competent Court, or to a Receiver who should be appointed by the Governor of the State of Tennessee, under the statutes aforesaid, if such default had occurred before any transfer of its lien or rights by said State.

And it is further covenanted and agreed by and between the parties hereto, their successors and assign, that whenever and as often as the said party of the first part, or its successors, shall acquire any franchises, lands equipment, or other property or interest of any name or nature, for the use of,

or in connection with its railroad, or for the pur- 285
poses of its incorporation, the said company, its successors or assigns, shall, and will acquire, possess and hold the same, and every part and parcel thereof, upon and subject to the lien and trusts of this Indenture; and that the said party of the first part, its successors and assigns, will from time to time, and at all times hereafter, and as often as thereunto requested by the parties of the fourth part, their successor or successors, execute and de-
liver any and all further deeds, conveyances and 286
assurances in the law for the better assuring unto the said parties of the fourth part, or their successors upon the trusts herein mentioned, all their railroads, its equipment and property of every nature, now owned or which may be hereafter acquired, including the franchise to be a corporation; and that in case the said party of the first part, its successors or assigns, shall thereafter receive or acquire lands or other property, and the said parties of the fourth part, their successor or successors, in behalf 287
of the holders of the bonds issued under this Indenture, shall deem it for the interest of their trust, and shall request the same, the said party of the first part, and its successors, will, from time to time, execute, and deliver, any and every such other mortgage or deed of trust or further assurance covering the lands or property so received, or acquired, which shall be necessary to hold and bind the same, as security for the payment of the principal and inter-
est of the bonds aforesaid, and performance of the 288
covenants and stipulations of this Indenture.

And it is further covenanted and agreed, that it shall and may be lawful for the said party of the first part, its successors, or assigns, at any time or times hereafter, to exchange for other property or sell any part of the hereby mort-

229 gaged premises, other than the said Railroad, which may not be necessary for the uses and purposes of such Railroad, and to convey the same, without liability on the part of the grantee as to the disposition of the purchase money or of the property received in exchange by the party of the first part, and the said parties of the fourth part, or their successors, shall and will, on the request of the party of the first part, its successors or assigns, execute all necessary releases for that purpose, the party of
230 the first part covenanting, that the proceeds of any sale so made shall be invested by it, either in the improvement of the remaining part of the mortgaged premises, or in the purchase of other property, real or personal, for the uses of its Railroad, which property so purchased, as also any acquired in exchange, as aforesaid, shall be subject to all the trusts hereby created of the property described in this Indenture, or in the purchase of bonds issued hereunder, which bonds, so purchased, shall be
231 forthwith cancelled and delivered to the parties of the fourth part, and the said parties of the fourth part and their successors may also, in their discretion, on the request of the party of the first part, consent to any change in the location of the track of said Railroad, or the depots and buildings, or structures thereof, as may seem expedient, and are authorized to make and deliver all instruments necessary and proper to effect such objects. And the party of the first part further covenants and
232 agrees that whenever it, or its successors or assigns, shall acquire any lands, property or franchises, or equipments of any nature or description, for use in connection with said Railroad, by any such change in the location of the tracks, depots or buildings thereof, or otherwise, they will hold the same upon and subject to the trusts of this Instrument, until conveyances thereof shall have been made and de-

livered, if required; and the party of the first part, and its assigns or successors, shall and will, whenever so requested, execute and deliver such further conveyances and assurances, for the better assuring to the parties of the fourth part, and their successors, upon the trusts herein expressed, any property, real or personal, movable or immovable, to which the said party of the first part, or its successors or assigns, may become entitled, by any purchase or exchange, or alteration in the location of the tracks, depots or buildings of said Railroad, as aforesaid.

And it is further covenanted and agreed, by and between the parties hereto, that in case of the death, resignation or inability of either of said parties of the fourth part, hereinbefore named as the Trustees under this indenture, the franchises, rights and property of every description herein conveyed to them shall at once vest in the survivor or survivors, and that such survivor or survivors may, with the assent of the party of the first part, designate a person or persons to succeed such person or persons dying, or resigning, or unable to act as one of the parties of the first part. And upon the person or persons so designated delivering to such survivors and to the said party of the first part, or its successors, a written acceptance of the trust, he or they, as the case may be, shall become the successor or successors of the person or persons so dying, resigning or becoming unable to act with all the rights and powers herein and hereby vested in the said parties of the fourth part. And in case all parties of the fourth part shall die, resign, or become unable to act, as aforesaid, so that there shall be no Trustees to discharge the trusts and duties created by this Instrument, or if any survivor or survivors and the party of the first part shall not agree in the

choice of a person or persons to succeed to and fill any such vacancy, persons to succeed thereto or to fill said trusteeships, or any of them, may be appointed by the Chief Justice of the Supreme Court of the State of Louisiana, on the application of the party of the first part, or of any such surviving Trustee or Trustees, or of holders of at least one hundred bonds to be issued hereunder, as aforesaid, provided that notice of the application be previously published in at least three daily papers in the City of New York, and in one newspaper published in each of the States of Louisiana, Mississippi, Tennessee and Kentucky for four successive weeks, one in each week.

And the said party of the first part, its successors and assigns, further covenants and agrees to pay to the said parties of the fourth part, and each of them, annually, for their ordinary services under this trust and in the discharge of the duties hereby created the sum of three hundred ($300) dollars, together with any necessary expenses actually incurred for clerk hire and legal advice, and it is further covenanted and agreed, and this trust is accepted upon the express condition that the said Trustees, parties of the fourth part, shall not nor shall their successors, or any future Trustee or Trustees, incur any liability or responsibility whatever, in consequence of permitting or suffering the said party of the first part to retain or be in possession of the railroad property and premises hereby mortgaged or any part thereof, or for any destruction, deterioration, loss or damage which may be done to or incurred by the railroads or estates hereby mortgaged, either by the act or default of such party of the first part, or its agents or servants, or of any other person or persons whomsoever, or for the consequences of any breach on the part of the party of the first part, or

the parties of the second or third parts, of any covenants herein contained, or of any act of the party of the first part, its agents or servants, or of the parties of the second or third parts, nor for any other matter or thing except for their or his own wilful or negligent breach of the trusts herein expressed and contained ; 241

And it is expressly covenanted and agreed, by and between the parties aforesaid, that all and singular the covenants, conditions and agreements herein contained, shall extend and apply to the successors and assigns of the respective parties, whether they be expressly named therein or not ; 242

And it is hereby expressly provided, and this Indenture is made upon condition that, if the said Chicago, St. Louis and New Orleans Railroad Company, its successors or assigns, shall well and truly pay, or cause to be paid, all the interest, without deduction of any taxes or assessments, as the same shall from time to time become due and payable upon the said bonds, as hereinbefore stipulated, and shall pay the said principal of said bonds at maturity, according to the tenor and intent thereof, and shall keep and perform all and every the covenants herein contained on the part of the said Company, then and in that case this Indenture shall be and become null and void, and the estate hereby granted or conveyed, or agreed so to be, shall be void and of no effect, anything herein contained to the contrary notwithstanding ; otherwise this Indenture and the estate hereby granted and conveyed, shall be and remain in full force. 243 244

In Witness Whereof, the said Chicago, St. Louis and New Orleans Railroad Company, hath caused its common seal and the signatures of

its President and Secretary to be hereto affixed; and the said New Orleans, Jackson and Northern Railroad Company hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said Central Mississippi Railroad Company, hath also caused its common seal and the signatures of its President and Secretary to be hereto affixed; and the said Adolph Schreiber of the City of New Orleans in the State of Louisiana, James Fentress of Bolivar in the State of Tennessee, and Lewis V. F. Randolph of the City of New York in the State of New York, Trustees, have hereunto set their hands and seals, all of which is done the eighth day of November, the year of our Lord one thousand eight hundred and seventy-seven.

Seal of the Chicago, St. Louis and New Orleans Railroad Company.

The Chicago, St. Louis & New Orleans Railroad Company, by
W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Seal of the New Orleans, Jackson and Northern Railroad Company.

The New Orleans, Jackson & Northern Railroad Company, by
W. H. OSBORN, President,
STUYVESANT FISH, Secretary.

Seal of the Central Mississippi Railroad Company.

The Central Mississippi Railroad Company, by 249

W. H. OSBORN, President.
STUYVESANT FISH, Secretary.

Signed, sealed and delivered by the said Messrs. Osborn and Fish in their said respective capacities in our presence.

L. E. SIMONDS,
W. W. FINLEY. 250

[L. S.] A. SCHREIBER,
[L. S.] JAMES FENTRESS, } *Trustees.*
[L. S.] L. V. F. RANDOLPH,

L. E. SIMONDS, } Witnesses to the signatures of
ANDREW HERO, JR. } A. Schreiber and Jas. Fentress.

W. J. MAURIAC, } Witnesses to the signature of
W. E. RUTTAN, } Lewis V. F. Randolph. 251

252

253 RESPONDENT'S EXHIBIT NO. 2.
W. H. D. L., Spl. Exr.

"STATE OF TENNESSEE.

We, James D. Porter, Governor, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify—pursuant to section 6 of an Act entitled 'An Act to liquidate the State debt contracted in aid of Railroad Companies in the State of Tennessee,' passed Eebruary 25, 1869, that Adolphe
254 Schreiber, James Fentress and Lewis V. F. Randolph (Trustees under a certain mortgage made the eighth day of November, 1877, between the Chicago, St. Louis and New Orleans Railroad Company, of the first part; the New Orleans, Jackson and Northern Railroad Company, of the second part; the Central Mississippi Railroad Company, of the third part, and the said Trustees of the fourth part), as Trustees for the purchasers and holders of the bonds to be issued under said mortgage, number-
255 ed from number one to number one thousand one hundred and ninety-nine, inclusive, have paid in and delivered up bonds and coupons of the State of Tennessee as authorized by the Act aforesaid equal in amount to the indebtedness heretofore created by the Mississippi Central and Tennessee Railroad Company, and the Mississippi Central Railroad Company, and which is a first lien on the Railroad and property heretofore known as the Mississippi Central Railroad, lying in the State of Tennessee,
256 and has become a debt of, and a first lien upon the property of the Chicago, St. Louis and New Orleans Railroad Company, its successor, in the State of Tennessee; that such payment was made by and with the written consent of the Board of Directors of the Central Mississippi Railroad Company and of the Chicago, St. Louis and New Orleans Railroad Company, as allowed by the statutes of Ten-

nessee, and that the said Trustees, for and in behalf 257
of the holders of said bonds to be issued under said mortgage to provide and be substituted for the debt of the State of Tennessee so paid, are substituted and entitled to all the liens against said property for the payment of said debt that the State of Tennessee had or has by law.

And we do hereby, as provided and authorized in the Act of February 25, 1869, and acts amendatory 258
thereof, in the name of the State of Tennessee and in her behalf and for the considerations above-named, assign and transfer to the said Adolphe Schreiber, James Fentress and Lewis V. F. Randolph, Trustees as aforesaid, all the debt and lien of the State of Tennessee on the Railroad and property heretofore owned in said State, by the Mississippi Central and Tennessee Railroad Company and on all the railroad and property in said State heretofore known as the 259
Mississippi Central Railroad, now known as the Chicago, St. Louis and New Orleans Railroad, which said State has or had on the same by reason of the internal improvement laws of said State, and the fact that said State had granted aid to said railroads under the statutes thereof, with all the rights, privileges and powers which said State has or had for enforcing said lien; the object being to substitute the said Trustees for the State, and to place them in the same position and with the same rights 260
which the State of Tennessee had previous to and before the said payment and delivery of State Bonds, with full power to enforce the same in any and every manner in which the said State may or might.

This the 28th of November, A. D. 1877.

In witness whereof, I, JAMES D. PORTER,
Governor of the State of Tennessee,

261 have hereto set my hand and caused the great seal of the State of Tennessee to be hereunto affixed, this 28th of November, 1877.

(Sd.) JAS. D. PORTER,
Governor.

In witness whereof, I, CHAS. N. GIBBS, Secretary of State, have hereto set my hand and the great seal of the
262 State of Tennessee, this November 28, 1877.

(Sd.) CHAS. N. GIBBS,
[L. S.] *Sec. State.*

263

264

Deposition of James P. Wallace.

1

CIRCUIT COURT OF THE UNITED STATES,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston R. R. Co.,

2

against

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of the Respondents, taken under and pursuant to the 67th Rule in Equity, as amended, before Willian H. DeLancey, Special Examiner, duly appointed herein.

3

NEW YORK, March 9th, 1880.

4

Present—Mr. CHAS. H. TWEED, *for Respd'ts;*
Mr. E. L. ANDREWS, *for Compl'ts.*

JAMES P. WALLACE, a witness produced on the part of the respondents herein, being first duly

5 cautioned and sworn in the above-entitled suit, to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct Examination by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

6 A. James P. Wallace; aged 63; I reside in Brooklyn; I am President of the N. Y. Guaranty and Indemnity Co.

2 Q. How long have you been President of that Company?

A. Since 1870 I think, previous to that I was Vice-President from the organization in 1865.

3 Q. What was the general character of the business carried on by the Guaranty and Indemnity Co.?

7 A. Loaning money on securities and merchandise.

4 Q. In the course of the dealings of that Company did it lend money to large amounts upon Tennessee State bonds?

A. We did so to large amounts and at various times extending through almost all the period of business from 1865 to 1875, when we withdrew from the business of making any loans.

5 Q. In the course of the dealings of the Guarantee & Indemnity Co. in Tennessee State bonds
8 was any discrimination ever made based upon the objects for which the bonds were issued by the State, whether for railroads, banks, turnpikes, the Capitol, Hermitage or the Agricultural Bureau, or did you ever inquire as to which of these objects any bonds presented to you were issued for?

A. After we commenced business, finding that the Tennessee bonds offered to us were of various

classes, I went to the Bond Committee of the Stock Exchange and to the Secretary of that Committee for information as to what bonds were a good delivery at the Stock Exchange. The information I obtained led me to consider all the old bonds, bonds issued before the war which were not mutilated by endorsements written upon them, or otherwise mutilated, were a good delivery without respect to the objects for which they had been issued, on a sale of "Old Bonds," and that all Tennessee State bonds issued after the war were a good delivery on a sale of "New bonds" without respect to the object for which they had been issued. And in our receiving Tennessee State bonds as collateral for loans we acted under that information, and we made no discrimination or enquiry in respect to the object for which the bonds had been issued.

6 Q. You have spoken of "endorsements" written upon certain old State bonds; please state the facts in respect to such endorsements.

A. The endorsements were to the effect that the bond was the property of some person or corporation. Something like a notice to the public that the bond belonged to some particular person. I understood these endorsed bonds were not a good delivery even if there was a subsequent endorsement to bearer, and we therefore rejected them.

7 Q. Did the Guaranty and Indemnity Company, in or about 1870, become the purchasers of any of the substitution bonds issued by the Nashville & Decatur R. R. Co?

A. In December, 1870, the New York Guaranty and Indemnity Company jointly with Drexel, Winthrop & Co., A. Iselin & Co., and R. T. Wilson & Co., agreed to purchase about $1,600,000 of such bonds, participating in the purchase to the extent of one fourth each, and on the 3d of May, 1871, we

13 received our share of such bonds, and paid for them.

8 Q. At the time that your company became purchasers of these bonds had you any knowledge of any claim of any holders of bonds issued by the State of Tennessee, and loaned to the Nashville & Decatur R. R. Co., or its predecessors, that they had any lien or claim upon the property of that company or its predecessors?

A. We had not.

14 9 Q. Did your company, in connection with Drexel, Winthrop & Co., issue the advertisement for the sale of these bonds now shown you?

A. Yes, we did. It is as follows, and it appeared in the leading papers in New York and in a Brooklyn paper, and also a circular:

December 31, 1870.

FINANCIAL.

SEVEN PER CENT. FIRST MORTGAGE BONDS

15 OF THE

NASHVILLE AND DECATUR RAILROAD.

The mortgage is for $2,100,000, or only $17,500 per mile, on an old and completed road, showing an established business, from local traffic, mainly more than sufficient to pay its interest as it becomes due, with prospects of greatly enlarged receipts from new connections which are now in progress.

This mortgage was created for the sole purpose of paying a debt due to the State of Tennessee, on terms which would reduce the liability of the road about $600,000.

Of the bonds issued under said mortgage $200,000 are held in escrow to abide settlement of a claim of the United States; $300,000 have been 16 purchased by the parties in interest, and the balance of $1,600,000 are offered for sale on favorable terms; the security, in the judgment of the undersigned, being such as to entitle them to perfect confidence.

DREXEL, WINTHROP & Co.,
18 Wall Street.
NEW YORK GUARANTY AND INDEMNITY Co.,
52 Broadway and Exchange Court.

10 Q. Was there endorsed upon those bonds a certificate of the Comptroller of the State of Tennessee in the form now shown to you? 17

A. Yes. This is the certificate:

"I certify that the Nashville & Decatur Rail-
"road Company has paid off the debt to the
"State of Tennessee, which was created by
"the loans of the bonds of said State, and
"for interest thereon, and that this bond is
"secured by a first mortgage, and is issued 18
"under authority of law, and takes the place
"of the lien which was held by the State.

"ED. R. PENNEBAKER,
"*Comptroller of the State of Tennessee.*
"By P. C. CALHOUN, *Prest. Agent.*"

11 Q. If the holders of any of the bonds of the State of Tennessee which had been loaned to the Nashville & Decatur R. R. Co., or its predecessors had asserted any lien or claim upon the property of that company by virtue of those bonds, would you have made the purchase? 19

A. If we had known of any such claim, we certainly would not, nor would we have recommended them nor inserted the advertisement produced.

12 Q. Did any of the directors, or persons connected with your company become purchasers of any of those bonds?

A. Yes, sir. I took some myself, and I think Wm. A. Low, S. D. Babcock, Wm. Allen Butler and Geo. W. Parson purchased some of them. 20

JAMES P. WALLACE.

Subscribed and sworn to before me this 9th day of March, A.D. 1880.

WILLIAM H. DELANCEY,
Special Examiner

21 I, WILLIAM H. DELANCEY, special examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-en-
22 titled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence.

Dated March 9th, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

23

24

Deposition of Thomas Denny.

UNITED STATES CIRCUIT COURT,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS & CHARLESTON R. R. Co.

vs.

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing on the part of the respondents in the above-entitled suit, taken under and pursuant to the 67th Rule in Equity, as amended before William H. DeLancey, Special Examiner, duly appointed herein.

NEW YORK, March 8, 1880.

Present—MR. CHAS. H. TWEED, *for Respondents.*
MR. E. L. ANDREWS, *for Compl't's.*

THOMAS DENNY, a witness produced on the part of the respondents herein, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

5 *Direct-examination* by Mr. TWEED:

1 Q. Please state your name, age, residence and occupation?

A. Thomas Denny; aged 46; I reside in New York City, and am a banker and broker.

2 Q. Are you a member of New York Stock Exchange?

A. I am.

3 Q. How long have you been a member of the
6 Stock Exchange?

A. Since 1858 or '59.

4 Q. Were you before that time also employed as clerk in the same business?

A. I was.

5 Q. During the period of your membership of the N. Y. Stock Exchange and your clerkship anterior thereto, have you been familiar with the manner of conducting transactions on the Exchange in Tennessee Bonds?

7 A. Yes.

6 Q. Please state how such dealings were conducted before the war, and into what classes Tennessee State Bonds were then divided?

A. They were bought and sold by open call at the Stock Exchange, and the classes into which they were divided were Tennessee 5s and Tennessee 6s.

7 Q. How were the contracts made between members of the Exchange in regard to those bonds entered into, and how were they recorded?

8 A. Contracts were made by the members between themselves orally, and such as they desired were recorded by the secretary on his books kept for that special purpose.

8 Q. Did those contracts specify the object for which the bonds dealt in were issued, or the distinctive numbers of the bonds to be delivered under the contracts?

A. The contracts did not state the object or numbers, but simply to the class, whether 6s or 5s. 9

9 Q. So that a person purchasing Tennessee 5s or Tennessee 6s, at the Stock Exchange, would not, at the time of making the purchase, nor until delivery was made under the contract, know the distinctive numbers of the bonds which he was to receive thereunder?

A. He would only know until delivery that he was to receive so many thousand dollars of 6s or 5s, without any other distinctive circumstances. No 10 distinction was made on account of the objects for which bonds were issued by the State.

10 Q. What change has taken place since the war in the classification at the Stock Exchange of Tennessee State Bonds?

A. Since the war the Tennessee 6s have been divided into Tennessee "olds," being the bonds issued before the war; Tennessee "new," being the bonds issued since the war, and Tennessee "new series," being the bonds issued for funding purposes. 11

11 Q. In other respects has the manner of dealing in these bonds at the Stock Exchange continued the same to the present time.

A. It continues the same except that the secretary's record is dispensed with, and in time contracts, written contracts, are exchanged between the members.

12 Q. In the oral dealings or the written contracts between the members is there any specification of the objects for which the bonds dealt in were issued 12 by the State, or the distinctive numbers of the bonds to be delivered?

A. There is not.

13 Q. So that a broker does not know until delivery is actually made what bonds of the classes "Old," "New" and "New Series" he will receive under his contract?

A. He knows the class, but neither numbers nor object for which the bond was issued.

14 Q. Did you ever know or hear of any contracts being made in the Exchange for the purchase or sale of Tennessee State bonds bearing any particular distinctive numbers, or issued for any particular purpose?

A. No such contracts were ever made on the Exchange.

15 Q. What proportion of the Tennessee State bonds which are bought and sold in New York are bought and sold in the New York Stock Exchange?

A. According to my knowledge they were almost exclusively bought and sold at the Stock Exchange.

16 Q. Did you ever hear of any Tennessee State bond being bought or sold in or out of the Stock Exchange as carrying a lien on any railroad in Tennessee to which the bond was loaned.

A. I never have.

17 Q. Have you dealt extensively in Tennessee State bonds since you have been a member of the Stock Exchange?

A. I have.

THOMAS DENNY,
30 Pine street,
New York.

Subscribed and sworn to before me,
this 8th day of March, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, WILLIAM H. DELANCEY, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proof of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, New York City, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit and examined, and the deposition was reduced to 18
writing and read to the witness and by him subscribed in my presence.

Dated 8th March, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

19

20

Deposition of Morris K. Jessup.

UNITED STATES CIRCUIT COURT, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON R. R. Co.

vs. 2

THE MEMPHIS & CHARLESTON R. R. Co. *et al.*

Testimony and proofs for final hearing, taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. DeLancey, Special Examiner, duly appointed herein. 3

52 Broadway,
New York, Feb. 21, 1880.

Present—Mr. W. Y. C. HUMES,
for Respondents, 4
Mr E. L. ANDREWS,
for Complainants.

5 MORRIS K. JESSUP, a witness, produced on the part of the respondents, being first duly cautioned and sworn in the above-entitled suit to testify the truth, the whole truth and nothing but the truth, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by MR. HUMES:

6 1 Q. What is your residence and business and how long have you so resided and done business?

A. My residence is New York city, and my business that of a banker, and I have been in business for twenty-five years.

2 Q. Were you a purchaser of substitution railroad bonds of any railroad in Tennessee; if yea, when did you buy them, what amounts, and at what price, and what did you pay for them?

A. I bought substitution bonds of the Memphis
7 and Charleston Railroad Company. I can't give the exact date. I think about three years ago. I bought $50,000. I think the price was about 75. I paid in cash.

3 Q. When you bought them did you or not have any information of any claim by the holders of the State bonds of Tennessee that they had a lien on the road, or did you buy them in the confident belief that these substitution bonds carried and were supported by the lien from the State?

8 A. I bought these bonds with the assurance that they took the place of the State lien on the road, and that all the lien of the State on this road was subrogated to these bonds, and it was that fact that induced me to take these bonds at that price at that time.

4 Q. What was your information as to the holders of Tennessee State bonds, and their overdue unpaid coupons?

A. I had no particular information on that point. 9

5 Q. Did you or not know or have the information that the State of Tennessee during the war and for a number of years after the war failed to pay the interest coupons on her State bonds, and the holders had funded them into new State bonds under the acts of 1865, 1868 and 1873?

A. I knew the general fact that the State of Tennessee had defaulted on her coupons about the time stated, and that the same had been funded into new bonds. 10

Direct examination closed.

Cross examination by MR. ANDREWS.

6 x Q. From whom did you have the assurance that the bonds you were about purchasing were entitled to the Tennessee lien?

A. From Mr. R. T. Wilson; and then I called upon Mr. Southmayd.

7 x Q. What did you discuss with Mr. Southmayd? 11

A. I don't remember now; I knew that he had examined the question of the legality of this matter and the title to the lien.

8 x Q. What did R. T. Wilson say?

A. I can't tell; all I know is the impression I received as to the legality of the bonds; I cannot go into the details; I do not remember them.

9 x Q. Did R. T. Wilson tell you (or show to you) an opinion of Judges Davies and Davis to the 12 effect that those bonds did not have a lien on the Memphis and Charleston Railroad, but that the lien belonged to Tennessee State bonds?

A. I never saw such an opinion, at least I don't remember it; Wilson (not that I remember of) never told me of that opinion.

10 x Q. Did you ever hear of any litigation con-

13 cerning this matter, and what did you hear, if anything?

A. I heard, in a general way, that the Tennessee bondholders claimed the lien on the Tennesse Railroad, but this was after I purchased the bonds.

11 x Q. When and at what price did you sell the bonds which you have stated you did sell?

A. I sold the bonds September 29, 1877, at 85 and interest.

14 *Re-direct* by Mr. HUMES:

12 Q. The Davies and Davis opinion in the cross-examination referred to was uttered early in 1870; do you not know the fact that no State bondholder from 1870 to 1878 ever did, under the influence of that celebrated opinion, claim or demand the payment of a single interest coupon of a Tennessee State bond from any railroad company in Tennessee, nor institute any legal proceeding looking toward such a purpose?

15 A. I remember nothing on the subject.

Re-cross by Mr. ANDREWS:

13 x Q. Was not Henry E. Davies shortly before that time the chief judge of the Court of Appeals of the State of New York, and was not Noah Davis shortly before that time a Justice of the Supreme Court of the State of New York?

A. I cannot say.

16 MORRIS K. JESSUP.

Subscribed and sworn to before me, this 27th day of February, A. D. 1880.

WILLIAM H. DELANCEY,
Special Examiner.

I, William H. DeLancey, Special Examiner, duly 17
appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit in the City of New York, do hereby certify that on the several days named in the deposition hereto annexed I was attended at my office, No. 52 Broadway, in the City of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in the above-entitled suit, and the deposition was reduced 18
to writing and read to the witness, and by him subscribed in my presence.

Dated, February 27, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

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DEPOSITION OF ADRIAN ISELIN.

CIRCUIT COURT OF THE UNITED STATES, 1

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of internal improvement Bonds of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY, 2

vs.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

Testimony and proofs for final hearing taken on the part of the respondents in the above-entitled suit, under and pursuant to the 67th Rule in Equity, as amended, before William H. De Lancey, Special Examiner, duly appointed herein. 3

NEW YORK, February 14, 1880.

Present.—Mr. W. Y. C. HUMES,
For Respondents. 4

MR. E. L. ANDREWS.
For Complainants.

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NEW YORK, February 14, 1880.

Present.—Mr. W. Y. C. HUMES,
For Respondents. 4

MR. E. L. ANDREWS.
For Complainants.

5 ADRIAN ISELIN, a witness produced on the part of the respondents in the above-entitled suit, being first duly cautioned and sworn therein, deposes and says:

(Deposition taken subject to all legal objections of both parties.)

Direct examination by MR. HUMES:

1 Q. Please state your name, firm name, residence
6 and occupation, and how long you have resided where you do now, and done business there?

A. Adrian Iselin, of full age. I am a partner in the house of A. Iselin & Co., in liquidation, and partner in the house of Iselin, Neeser & Co. My residence is in the city of the New York and has been nearly all my life. I was born in the city. My business has always been that of a banker and commission merchant.

2 Q. Did you or not, as a banker, negotiate and
7 buy the substitution bonds of the East Tennessee, Virginia and Georgia Railroad Company, and if yea at what time?

A. I did buy them. I bought $500,000 on 1 July, 1870; $500,000 between the 25th and 28th of July, 1870; $200,000 on the 25th March, 1871, and $840,000 in April, 1871, between the 3d and the 25th of April.

3 Q. Were you before the dates of these purchases or within the period embraced by them, a president, director, or stockholder in said company, or occu-
8 pying any fiduciary or confidential relation to this company?

A. I was not at the time of the purchases made in 1870; but I am not certain whether I held any stock or not in the company before the purchases made in 1871. I had no connection with the company at all before the first purchases.

4 Q. What did you give for these bonds, and did you or not consider it the fair value at the time?

A. I paid 82½ per cent for the bonds and accrued 9
interest. I considered it the full and fair value at the time. I paid this amount in money at the time, without any deduction whatever.

5 Q. Were you or not aware at the time you made these purchases that the holders of State bonds of Tennessee, held a large amount of interest coupons overdue and unpaid by the State—that they had funded some of them under the act of 1865, and had never set up any claim of an obligation in respect of them against the railroad companies to whom 10
they were issued, or a lien on the same.

A. I was aware that a large amount of interest coupons on Tennessee State bonds remained unpaid. That a portion of these coupons had been funded previously into new State bonds, and I was not aware that any holder of Tennessee State bonds had brought forward any claim that their bonds were secured by a lien on the railroads to which they had been issued.

6 Q. Did you have anything to do with the negotiation of or did you purchase any of the substitu- 11
tion bonds issued by the Mobile and Ohio Railroad Company; if yea, please state the facts?

A. I purchased the Tennessee substitution bonds of the Mobile and Ohio Railroad in conjunction with R. T. Wilson & Co. and Duncan, Sherman & Co. Some bankers in Europe were interested in the purchase made in the name of my house. These purchases were made in December, 1871, at 85 and accrued interest. We paid for them in money.

7 Q. At the time that these purchases were made 12
was your knowledge and information the same or different touching the holders of State bonds and overdue coupons, and the absence of any claims by them of obligation against or lien upon the railroads as it was when you purchased the substitution bonds of the East Tennessee, Virginia and Georgia Railroad.

13 A. It was the same.

8 Q. Before you purchased the East Tennessee, Virginia and Georgia Railroad Company substitution bonds did you know of their being offered for sale elsewhere?

A. I knew that the East Tennessee, Virginia and Georgia substitution bonds were offered to the New York Guaranty and Indemnity Co. before they were offered to me, and my first knowledge of these bonds was derived from a discussion in relation to them at
14 the board of trustees of the above company, of which I was a member.

9 Q. Did you or not by and with the consent of the Memphis and Charleston R. R. Co. purchase from the State of Tennessee, and take an assignment of the lien of the State on the property of said company for the debt due from said company to the State in respect of the State bonds lent by the State to said company; if yea, please give the date?

15 A. I did so purchase the lien which the State of Tennessee held on a portion of the Memphis and Charleston R. R. for the bonds issued by the State to this corporation. This was in the last days of July or beginning of August, 1877.

10 Q. Please state what facts, if any, existed within your knowledge or information, touching the interest coupons of the State bonds of Tennessee from 1865 to July, 1877?

A. I know that during this period the coupons of
16 the State remained unpaid, except after they had been funded in the new bonds, when I believe three coupons were paid.

11 Q. During this period, from 1865 to July, 1877, did the holders of any coupons of Tennessee bonds claim or demand payment of the same, by legal proceeding or otherwise, from any railroad company in the State of Tennessee?

On or about the twenty-fifth day of July, 1877, my firm of A. Iselin & Co., consisting of myself and my son, Adrian Iselin, Jr., delivered to the State of Tennessee, Tennessee State bonds and coupons to the amount of $1,736,920 in payment for the assignment to us of the lien of the State upon so much of the Memphis & Charleston Railroad as was situated in the State of Tennessee, which lien was transferred to us by the assignment executed by James D. Porter, Governor of Tennessee, bearing date the 25th day of July, 1877, a copy of which is annexed to my deposition in this case.

A. I never heard that any such claim was made. 17

12 Q. Do you not now know, and did you not also know in July, 1877, that all the overdue coupons on Tennessee bonds had been funded by the holders thereof, and their bonds registered under the funding act of Tennessee of March, 1873?

A. I do not know whether the coupons on every one of the Tennessee State bonds were so funded, but I do know that all, except a very small number, were so funded, as no bond which had not been registered was a good delivery on our stock exchange, 18 and I never saw a Tennessee State bond which had not been so registered; I knew this in July, 1877, as well as I do now.

13 Q. Were the facts stated by you in your last two answers known to you at the time you purchased the lien on the Memphis and Charleston R. R. from the State, that is, the absence of demand of claim by holders against the railroad companies, and the funding of coupons and registering of bonds under the act of 1873? 19

A. Yes, these facts were then known to me.

14 Q. Please state whether you had any conversation with or heard any conversation by any holder or holders of Tennessee bonds while the settlement of the Memphis and Charleston R. R. debt was pending; if yea, please state them?

A. I had some conversations on this subject with Mr. Peter Geddes at my own office, and was present at numerous conversations which took place at the office of R. T. Wilson & Co. on the subject of pay- 20 ing off the debt of the Memphis and Charleston R. R. Co. due the State of Tennessee. In these conversations Mr. Geddes urged Mr. Wilson, as President of the Memphis and Charleston R. R., to pay off this debt with as little delay as possible, as the Governor of the State of Tennessee had told him—Mr. Geddes—that it would very much facilitate the

21 settlement of the State debt if its amount had been reduced to the lowest possible point by the railroads who were able to do so paying off the debts they owed the State. Mr. Wilson repeatedly stated to Mr. Geddes that he was perfectly willing and even anxious to pay off the debt due by the Memphis and Charleston R. R. if he could procure the State bonds necessary to do it with, and as few of these State bonds were offered at the time in the market, Mr. Wilson asked Mr. Geddes whether
22 he would not loan him the Tennessee State bonds he controlled so as to be able to pay off the debt due by the Memphis and Charleston R. R. to the State. This, however, Mr. Geddes refused to do, saying, I believe, that he had no authority for disposing of bonds in that way. In the conversations which I had with Mr. Geddes at my office, Mr. Geddes urged me to make Mr. Wilson pay off the Memphis and Charleston R. R. debt to the State of Tennessee with as little delay as possible, urging
23 the same arguments as in the conversations held at Wilson's office.

Adjourned till further notice.

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52 BROADWAY, February 16, 1880.

Direct-examination resumed :

15 Q. When did the conversations that you have
24 related as occurring between Mr. Geddes, Mr. Wilson and also yourself, occur?

A. As far as I recollect they occurred in the spring of 1877, whilst the question of the Memphis and Charleston R. R. Company paying off the State lien was being discussed by Mr. Wilson and myself and some other parties interested in the Memphis and Charleston R. R.

16 Q. Will you please exhibit with this your de- 25
position copies of the evidences of your purchase of the State lien on the Memphis and Charleston R. R. and the contracts with the company in settlement thereof.

A. I have not those documents with me, but will produce them and file them with this deposition.

17 Q. If you have refreshed your memory, please state accurately when you became officially connected with the East Tennessee, Virginia and Georgia R. R. Co.? 26

A. I became director of that company in September, 1874, and stockholder in December, 1873.

Cross-examined by E. L. ANDREWS, Esq., for complainant:

18 x Q. Have you ever heard of the opinion of Judges Davies and Davis to the effect that the Tennessee bonds issued to railroads, constituted liens 27
thereon.

A. Yes, I did.

19 x Q. Was it not in the year 1870, and about the time of negotiations with Lombard, Odier & Co., of Geneva, for the sale of East Tennessee, Virginia and Georgia R. R. Co. substitution bonds that you heard of that opinion?

A. Yes, it was. The opinion was shown to me by Mr. Odier.

20 x Q. Were you not in some way connected, 28
and if so, how, with the obtaining of the opinion of Charles Tracy, Esq., of the New York bar, in reference to the matter stated in the foregoing question?

A. I was no further connected with obtaining that opinion, except that I told Mr. Odier if the opinion of Davies and Davis gave him the least

29 anxiety, he had best have the opinion of some lawyer, selected by himself, on the subject; he said he had known Mr. Tracy in Europe; he would go to him; I personally did not come in contact with Mr. Tracy at that time.

21 x Q. How about any subsequent time?

A. I am not certain, but believe that I did come in contact with Mr. Tracy in relation to the opinion he gave later about the legality of preserving the lien which the State of Tennessee held on the Mo-
30 bile and Ohio R. R. Co., after it had been paid; after the debt to the State had been paid.

22 x Q. Did you not consult any other counsel in relation to any of these matters at or about any of those times?

A. I consulted personally no counsel at the time I bought the East Tennessee, Virginia and Georgia R. R. substitution bonds, but read over the opinions handed me by Mr. R. T. Wilson of lawyers in Tennessee; one of them was named Baxter. The time the
31 Mobile and Ohio R. R., the consultations with lawyers, concerning the legality of substituting railroad bonds for the State lien, and the way of doing it, were carried on principally by Mr. R. T. Wilson and William B. Duncan, and with the exception of Mr. Charles Tracy, I do not recollect having asked the advice personally of any counsel. One of the lawyers with whom Mr. Wilson consulted was Mr. Charles F. Southmayd.

23 x Q. Were you not a director of the Galla-
32 tin National Bank, and if so about what time?

A. I was a director of the Gallatin National Bank for about thirty years, from 1846 to 1876.

24 x Q. Did not the Gallatin National Bank offer Nashville & Decatur substitution bonds for sale?

A. Yes, sir; and also East Tennessee, Virginia & Georgia Railroad bonds.

25 x Q. Was not the opinion of Charles Tracy

printed and published in some of the prospectuses 33
of the sale of substitution bonds by the Gallatin Bank?

A. One of the opinions of Charles Tracy was printed in pamphlet form, but was not circulated either here or in Europe.

26 x Q. Why did you not publish, if you did not, or notify intending purchasers of the substitution bonds in America or Europe of the opinion of Davies and Davis, the former having been a Chief-Justice of the State of New York? 34

A. Because as long as the parties to whom this opinion was addressed and in whose interest it was apparently written did not act upon it, it was a proof that they themselves considered this opinion unsound, and did not consider they could maintain any claim against the railroads for the bonds they held from the State of Tennessee. The parties in whose interest this opinion had been written having attached no importance to it I did so neither.

27 x Q. The opinion shown to you of Davies & 35
Davis, was it not printed?

A. It was printed.

28 x Q. Had you not negotiated for Tennessee substitution bonds about seven years before your conversation with Mr. Geddes as testified by you?

A. Yes, I had.

29 x Q. Were you not one of the complainants in the suit of Adrian Iselin and others versus the Mobile & Ohio Railroad Company and others in the United States Circuit Court for the Western Dis- 36
trict of Tennessee, pending therein during the year 1877?

A. Yes, sir.

30 x Q. Were you not present upon the hearing of the appeal of that case, in the Supreme Court of the United States?

A. Yes, I was.

37 31 x Q. Were you not aware that the Supreme Court of the United States took the case under advisement, and so held it after its adjournment for the summer recess of 1878?

(Objected to as wholly irrelevant and incompetent.)

A. I know that some time passed before the Supreme Court gave any decision upon that case.

32 x Q. Had not an effort been made pending
38 this suit to have the substitution bonds of the Memphis & Charleston Railroad placed on the Stock Exchange?

A. I do not know.

33 x Q. At what prices did you sell the East Tennessee, Virginia & Georgia, the Mobile & Ohio and the Memphis & Charleston substitution bonds if the latter have been sold?

A. The latter were bought by us and other parties, and to my knowledge none of them have been
39 resold, at least we hold all the bonds we purchased. I refuse to answer what price Mobile & Ohio & East Tennessee, Virginia & Georgia bonds were sold by me, because it is a matter which only concerns me personally.

34 x Q. Have not the new first mortgage bonds and debentures of the Mobile & Ohio Railroad been placed on the New York Stock Exchange, and were you not at that time a holder of those securities?

A. Those bonds were placed on the New York
40 Stock Exchange, and I was a holder at that time.

35 x Q. Did you not state to Mr. Peter Geddes that one of the directors of the Memphis & Charleston Railroad, Mr. Cossitt, opposed the purchase of Tennessee bonds to deliver to the State, on the ground that the company would get them cheaper after a time, or words to that effect?

A. I do not recollect whether I stated this to Mr.

Geddes. I do recollect that Mr. Cossitt frequently 41
expressed the opinion to Mr. Wilson when I was present that he ought to be in no hurry to buy the Tennessee State bonds as they would probably go lower.

36 x Q. Have you not been a holder or representative of holders of Tennessee State bonds; if so, please state details?

A. We have always, at least for the last fifteen or twenty years, been representative of Tennessee State bonds, and we have been owners of them at 42
different periods. In the year 1866 we bought for our account seventy-six thousand dollars Tennessee State bonds and sold eighteen of them. In the year 1868 we bought ten thousand dollars and sold sixty-eight, leaving us without any on hand. In 1869 we neither bought nor sold any Tennessee State bonds for our account. In 1870 we bought seventy-five thousand dollars and we sold them the same year. In 1871 we bought $17,000, and we sold them the same year. We owned no bonds up to 1874 since 43
that time. In 1874 we bought thirty-two thousand dollars and we sold them. The next purchase we made of Tennessee bonds was in 1877, when we bought one million six hundred and forty-eight thousand dollars, which we paid over to the State for the lien it held against the Memphis & Charleston Railroad, and in 1878 we bought thirty-two thousand dollars in bonds, and sold them the same year. Since that we have bought no Tennessee bonds. 44

Adjourned to February 18, 1880.

45 February 18, 1880.

Cross-examination resumed by E. L. ANDREWS, Esq., for complainants.

37 x Q. Have you not looked at any of the comptroller's reports of the State of Tennessee.

A. I have seen some of them.

33 x Q. Have you not seen some that contained the list of the numbers and descriptions of State bonds issued to each Railroad Company?

46 A. I have seen some stating the amount of bonds issued by the State to the different railroads, but do not recollect having seen the lists of the numbers of these bonds; I saw the Comptroller's report of 1875.

39 x Q. Have you not seen Pennybacker's sheet of Tennessee bonds?

A. I do not recollect of having seen it.

40 x Q. Did Lombard, Odier & Co., or any firm in Europe that sold the substitution bonds, publish
47 any of the legal opinions that have been referred to in your examination?

A. Not to my knowledge.

41 x Q. Please name the Tennessee substitution mortgages of which you are Trustee?

A. East Tennessee, Virginia & Georgia R.R., Nashville, Chattanooga & St. Louis; I don't recollect whether I am Trustee on the Nashville & Decatur; I was on the Mobile & Ohio.

42 x Q. Did not you or your firm hold by assign-
48 ment the lien of the State of Tennessee on the Memphis & Charleston Railroad?

A. In answer I produce all the contracts and arrangements which I or my firm had in connection with the Memphis & Charleston Railroad, and herewith file the same and make it a part of my deposition as Respondents' Exhibit No. 1, W. H. D. L., Spl. Exr., & Respondent's Exhibit No. 2, W. H. D. L., Spl. Exr.

(Plaintiff's counsel moves to strike out the answer and exhibits as irresponsive to the question.) 49

43 x Q. When did you become a director of the Mobile & Ohio Railroad Co., or any member of your firm?

A. One of my sons, Mr. Adrian Iselin, Jr., has been a director of the Mobile & Ohio Railroad for some time, but do not recollect for how long, but not before 1878. I am a director of the Knoxville & Ohio Railroad; became such in 1877; I have been a director in the Nashville, Chattanooga & St. Louis Railroad, but am not now. 50

Re-direct examination by Mr. HUMES:

44 Q. When did you first learn that any holder of bonds of the State of Tennessee was setting up a claim that the lien reserved to the State belonged to and was intended to secure the payment of the State bonds issued to the railroad? 51

A. In the fall of 1877.

45 Was it before or after your firm had purchased the Memphis & Charleston lien?

A. After.

46 Q. When was the Mobile & Ohio case argued in the Supreme Court of the United States?

A. In the spring of 1878.

47 Q. Was not the appearance of their counsel in the Supreme Court on that argument the first attempt on the part of holders of bonds of Tennessee 52 to gain admittance into that suit and assert their claim to the lien?

A. As far as I know it was.

48 Q. What has been the effect of the holders of Tennessee bonds legally asserting by these suits their claim to the lien, on the substitution bonds or negotiability in the market?

53 A. It prevented the marketing of the bonds which had not already been distributed. I refer to the Memphis & Charleston Railroad substitution bonds which we bought with the intention of reselling, but when it became known that some of the holders of Tennessee State bonds intended to assert or prosecute a claim against the railroads to whom these bonds were issued, it became impossible for us to sell those bonds, and within a short time Messrs. Drexel, Morgan & Co. offered the mortgage bonds of
54 the Evansville, Henderson & Nashville Railroad, but notified the public that $800,000 of the bonds being the proportion on the road in the State of Tennessee would not be sold until the suits commenced against the railroads had been settled. The commencement of these suits had also the effect of preventing, till within a short time, any rise in the substitution bonds which had already been distributed, similar to what took place in all other kind of securities. The holders of these bonds in Europe sent back a great
55 many of these bonds and there were sales of East Tennessee, Virginia & Georgia substitution bonds as low as 96; whilst railroad bonds considered good were selling at a heavy premium. Since the first of January, however, these bonds are scarce in the market and have advanced in price. Nevertheless, no quantity of them could be sold at prices corresponding with those of other railroad bonds.

49 Q. You stated in answer to cross interrogatory 36 that you were the purchaser and seller of the
56 bonds therein stated, how were they bought and sold?

A. They were all bought and sold in the Stock Exchange.

50 Q. What were the classifications of Tennessee State Bonds, before the New York Stock Exchange from 1865 to 1877?

A. Old Tennessee State bonds and new.

51 Q. Was there any such distinction pointing 57
to the railroads to which they were issued?

A. No, there was no distinction of any kind between the bonds except that between old bonds and new, and no difference in price of old bonds.

Re-cross:

52 x Q. Have you not purchased substitution bonds of Tennessee railroads on your own account or others during the years 1879 and '80?

A. I don't believe we have bought any for our 58
own account, and whatever we may have bought for account of other parties was on specific orders given to us to buy the bonds. We bought none of such bonds for other parties when the nature of the investment to be made was left to our discretion.

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52 Broadway, New York, 59
February 20th, 1880.

Present—Counsel as before.

Re-direct:

53 Q. Had this suit been brought before the sale and purchase of the substitution bonds, what effect would it have on this sale and responsibility?

A. I myself would have had nothing to do with 60
the bonds.

Re-cross:

54 x Q. Did you sell any substitution bonds?

A. Yes, I did.

55 x Q. How many?

A. I cannot say how many but quite a considerable amount which were sent back to us from Europe,

61 and also some Nashville, Chattanooga & Saint Louis bonds which we owned.

ADRIAN ISELIN.

Subscribed and sworn to before me, this 20th day of February, 1880.

WILLIAM H. DELANCEY,
Special Examiner.

62 I, WILLIAM H. DELANCEY, Special Examiner, duly appointed by the Circuit Court of the United States for the Western District of Tennessee, to take the testimony and proofs of both parties in the above-entitled suit, in the city of New York, do hereby certify that on the several days named in the deposition hereto annexed, I was attended at my office, No. 52 Broadway, in the city of New York, by the counsel and witness aforesaid. That the said witness was duly cautioned and sworn in
63 above-entitled suit and examined, and the deposition was reduced to writing, and read to the witness, and by him subscribed in my presence, and that the Exhibits hereto annexed, marked "Respondent's Exhibit No. 1. W. H. D. L., Special Examiner" and "Respondent's Exhibit No. 2 W. H. D. L., Special Examiner," were introduced in evidence in said cause during the taking of said deposition.

Dated February 18th, 1880.

64 WILLIAM H. DELANCEY,
Special Examiner.

65

RESPONDENTS' EXHIBIT No. 1.

W. H. D. L., Spl. Exr.

AN INDENTURE, made the twentieth day of August, eighteen hundred and seventy-seven, between the Memphis and Charleston Railroad Company, a corporation duly created and organized by and under the laws of the respective States of Tennessee and Alabama and Mississippi, party of the first part, and the Farmers Loan and Trust Company, a corporation created by the laws of the State of New York, and located in the city of New York, party of the second part. 66

WHEREAS, the said party of the first part now possesses, owns, and is operating its main line of railroad, extending from Memphis, in the State of Tennessee, via Corinth, in the State of Mississippi, and Huntsville, in the State of Alabama, to Stevenson, in the State of Alabama, a distance of two hundred and seventy-two miles or thereabouts, 67 together with a branch thereof in the State of Tennessee, known as the Somerville and Moscow branch, extending from Moscow, on the main line to Somerville, a distance of about fourteen miles, and the branch thereof in the State of Alabama, extending from Tuscumbia, on the main line to Florence, a distance of about five miles; and also the Washington street branch, so called, extending from the Memphis and Charleston Railroad depot, in the city of Memphis, through Washington street 68 and Center Landing, to the Mississippi river, a distance of about one mile; and also certain rights and privileges for transportation of its passengers and freight in its own cars over the railroad running between Stevenson, in Alabama, and Chattanooga, in Tennessee, under and in virtue of a certain contract, of June twenty-third and July twenty-sixth,

eighteen hundred and fifty-eight, made between the said Memphis and Charleston Railroad Company; and the said party of the first part also owns and possesses the rolling stock, or equipment and machinery for the operation of its said railroad and branches; and also the depots and grounds and buildings and other appurtenances of and for uses and purposes of its said railroad and branches, and other real estate situate upon and along the line of its road, and the other things hereinafter described and mortgaged.

And Whereas, all those parts of the said railroad, as well branch as main line, which are situate in the State of Tennessee, with the lands and premises thereunto appertaining, embracing all the real estate of the said party of the first part, situate in the State of Tennessee, with the improvements thereon, and the rolling stock or equipment, and other appurtenances thereof, are subject to a first and paramount statutory lien, in the nature of a mortgage, originally created and existing in favor of certain Tennessee State Bonds, loaned, or advanced, or delivered to, or in aid of said railroad company, by the State of Tennessee, under and in pursuance of the General Internal Improvement Laws of that State, and for or in respect of the amount of principal and interest, of which State bonds, thus loaned, advanced or delivered the said the Memphis and Charleston Railroad Company became indebted to the State of Tennesse, and which indebtedness of said railroad company to said State, and the lien held by the said State therefor, have been recently, with the consent and approbation of the said the Memphis and Charleston Railroad Company, and of its Board of Directors, duly assigned and transferred by said State to and are now held and owned by Adrian Iselin and

Adrian Iselin, Junior, composing the firm of A. 73
Iselin & Co., of the city of New York, in the like position and with the like rights to enforce the same, as the said State had, which assignment and transfer was made and effected under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the other laws of said State in that behalf, and the amount of such indebtedness of said party 74
of the first part, and of the attendant lien therefor upon its said railroad and other property, in the State of Tennessee, thus assigned to and now held by said Adrian Iselin and Adrian Iselin, Junior, including the interest accrued thereon to the first day of July, eighteen hundred and seventy-seven, is seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and the principal thereof bears interest from the said first day of July, eighteen hundred and seventy- 75
seven, at the rate of six per cent. per annum.

And whereas there are now outstanding and unpaid, as debts of the said party of the first part, twelve hundred and ninety-three thousand dollars in amount of the so-called first mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said Company's so-called first mortgage or deed of trust, dated May first, eighteen hundred and forty-four, to James Punnett, G. B. Lamar and Thomas Fearn, as 76
trustees, covering the said Railroad Company's line of railroad, situated in the States of Alabama and Mississippi respectively, with the appurtenances and equipment thereof, as a first mortgage lien thereon, and likewise covering the said Railroad Company's line of railroad in the State of Tennessee, with the appurtenances and equipments thereof,

77 subject and subsequently to the prior and paramount lien and encumbrance thereon of the abovementioned debt and lien originally existing in favor of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, junior, the principal of the said so-called first mortgage bonds, for twelve hundred and ninety-three thousand dollars, falling due and payable on the 1st day of May, eighteen hundred and eighty, and the said bonds in the meantime bearing interest at the rate of seven per cent. per
78 annum, payable semi-annually on the first days of May and November.

AND WHEREAS there are also now outstanding and unpaid, as debts of the said party of the first part, one million dollars in amount of the so-called second mortgage bonds of the said The Memphis and Charleston Railroad Company, issued under and secured by said Company's so called second mortgage or deed of trust, dated January first, eighteen hun-
79 dred and sixty-seven, to Gustavus L. Mastin, George W. Neal and William C. Rehen, as trustees, covering the same premises as the said so-called first mortgage, but subject to the prior lien and encumbrance of such so-called first mortgage, and in like manner therewith subject, so far as respects the said line of railroad, in the State of Tennessee, and the appurtenances and equipment thereof, to the prior and paramount lien and encumbrance thereon of the said debt and lien, originally existing in favor
80 of the State of Tennessee, and now held by Adrian Iselin and Adrian Iselin, junior, as aforesaid, the principal of the said so-called second mortgage bonds, for one million dollars, falling due and payable on the first day of January, eighteen hundred and eighty-five, and the said bonds in the meantime bearing interest at the rate of senen per cent. per annum, payable semi-annually on the first days of January and July.

AND WHEREAS the said party of the first part is 81
subject to certain further indebtedness, for the liquidation whereof it needs to make provision.

AND WHEREAS the said Adrian Iselin, and Adrian Iselin, junior, have expressed their willingness in a certain manner, and upon certain conditions, to make a certain eventual deduction or discount from the full amount now due or owing to them, upon the said indebtedness and lien, originally existing in favor of the State of Tennessee, which has been 82
assigned to and is now held by them as aforesaid, provided the said Railroad Company will give to them such additional collateral security for such indebtedness upon the terms and conditions hereinafter mentioned in that behalf, and enter into and carry out such arrangements with them in respect of the eventual liquidation and satisfaction of said indebtedness as are hereinafter stated.

AND WHEREAS, in the exercise of the powers in 83
that behalf possessed by it, under the laws of the respective States of Tennessee, Alabama, and Mississippi, in order to provide for further securing the payment of its aforesaid indebtedness, originally existing in favor of the State of Tennessee, assigned and transferred to, and now held by Adrian Iselin, and Adrian Iselin, Junior, as aforesaid, and also to make such provision as is hereinafter contained or declared, for the eventual liquidation and satisfaction of that indebtedness, with the interest accru- 84
ing and to accrue thereon, from and after the first day of July, eighteen hundred and seventy-seven, and likewise in order to provide for taking up and discharging its above mentioned, now outstanding, first mortgage bonds, so called, for twelve hundred and ninety-three thousand dollars, with the interest thereon, and its second mortgage bonds, so called,

for one million dollars, with the interest thereon, and its other now existing indebtedness hereinbefore referred to, and thus to consolidate and arrange its debts, as by law it is entitled to do, and for other lawful uses and purposes of its business, and agreeably to the laws regulating it. The said The Memphis and Charleston Railroad Company, in accordance with resolutions of its shareholders, and of its Board of Directors, at meetings of such shareholders, and such Board of Directors, respectively, duly and regularly held, has caused to be prepared and made ready for execution, under its corporate seal, with the signatures of its President and Treasurer, respectively, and for subsequent issue, negotiation and use, as hereinafter provided, its certain, so called, consolidated first mortgage bonds, for the aggregate amount of four millions seven hundred thousand dollars of United States Gold Coin, consisting of four thousand seven hundred of such bonds, numbered consecutively from 1 (one) to 4,700 (four thousand seven hundred), both inclusive, bearing date respectively the twentieth day of August, eighteen hundred and seventy-seven, each of such bonds being for the payment to the holder thereof, on the first day of January, nineteen hundred and fifteen, in the City of New York, of one thousand dollars, in United States Gold Coin, and for the payment of interest thereon from the first day of July, eighteen hundred and seventy-seven, and in the meantime, at the rate of seven per cent. per annum, in like Gold Coin, in the City of New York, semi-annually, on the first days of January and July, in each year, on presentation and surrender of the coupons, or interest warrants for such interest, to such bond annexed, and in accordance with resolutions, both of its shareholders and its Board of Directors, repectively, duly held, has determined to secure the payment of

the principal and interest of said bonds, which shall be issued within the said aggregate limit of four millions seven hundred thousand dollars, by this mortgage, in the manner and to the effect hereinafter expressed.

AND WHEREAS, the form of such bonds, and of the coupons, or interest warrants to be annexed thereto, and of the trustee's certificate to be endorsed thereon by the Trustee of this mortgage, viz.: the said party of the second part hereto, and to be executed on behalf of the said party of the second part hereto by its president are to be substantially as follows:

UNITED STATES OF AMERICA,

[NUMBER.] CONSOLIDATED [NUMBER.]

FIRST MORTGAGE BOND

The Memphis and Charleston Railroad Company.

INTEREST PAYABLE SEMI-ANNUALLY, JANUARY AND JULY.

[1000] [VIGNETTE.] [1000]

The Memphis and Charleston Railroad Company promises, for value received, to pay to the holder of this bond, on the first day of January, nineteen hundred and fifteen, the sum of one thousand dollars, in United States Gold Coin, in the City of New York, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like gold coin, in the City of New York, semi-annually, on the first days of January and July in each year, on presentation and surrender of the annexed interest warrants.

This bond, with others issued or to be issued, amounting to not more than four millions seven hundred thousand dollars, is secured by a mortgage

of said Company's road, franchises and equipment, as provided in an indenture of trust and mortgage made to the Farmers' Loan and Trust Company of the City of New York, dated the twentieth day of August, eighteen hundred and seventy-seven. This bond shall pass by delivery or by transfer on the books of the Company. After a registration of ownership, certified hereon by the Transfer Company, no transfer except on the books of the Agent of the Company shall be valid unless the last transfer be to bearer.

In witness whereof, the said Company hath hereunto affixed its corporate seal, and caused this bond to be signed by its President and Treasurer, this twentieth day of August, eighteen hundred and seventy-seven.

[L. S.]

President.

[VIGNETTE.]

Treasurer.

FORM OF COUPON.

$35	On the first day of January, 18—, the Memphis and Charleston Railroad Company will pay to bearer, in the City of New York, in United States gold coin, Thirty-five Dollars, being for semi-annual interest on bond No.	$35
——		——
	Treas.	

FORM OF TRUSTEES CERTIFICATE.

We hereby certify that this is one of the Bonds issued under the Mortgage therein referred to.

THE FARMERS LOAN AND TRUST CO., TRUSTEES,

by *President.*

and none of which bonds are to be entitled to share 97
in the benefit or security of this mortgage unless
they shall have endorsed thereon such certificate of
the Trustee hereunder, or its successor or succes-
sors in the trust, and which coupons are to be issued
with the engraved signature of the Treasurer of
said Railroad Company, and when thus issued by
said Railroad Company, it is hereby by it agreed
shall be as binding upon it as if such signature were
written by said Treasurer.

Now, THIS INDENTURE WITNESSETH, that in or- 98
der to secure the due and punctual payment of the
principal and interest mentioned in, and to become
payable upon the above mentioned bonds, within
the said aggregate limit of four millions seven hun-
dred thousand dollars, in United States gold coin,
and of the coupons accompanying the same, ac-
cording to the tenor and effect of such bonds and
coupons, respectively, and in consideration of the
premises aforesaid, and of one dollar to the said
party of the first part in hand paid by the said 99
party of the second part, at and before the unseal-
ing and delivery of these presents, the receipt
whereof is hereby acknowledged, the said The Mem-
phis and Charleston Railroad Company, party of
the first part, HATH granted, bargained, sold, con-
veyed, assigned, transferred, and set over, and by
these presents DOTH grant, bargain, sell, convey,
assign, transfer, and set over, unto the said The
Farmers' Loan and Trust Company, party of the
second part, and to its successors and assigns for- 100
ever, ALL and singular the main line of Railroad of
the said Memphis and Charleston Railroad Com-
pany, extending from the point of commencement
thereof, in the City of Memphis, in the State of
Tennessee, via Corinth, in the State of Mississippi,
and Huntsville, in the State of Alabama, to the
terminus thereof in Stevenson, in the said State of

Alabama, connecting there with the Nashville and Chattanooga Railroad, being a distance of two hundred and seventy-two miles, be the same more or less, and also the branch of said Railroad, situate in the State of Tennessse, known as the Somerville and Moscow Branch, extending from Moscow, on the main line to Somerville, a distance of about fourteen miles, be the same more or less ; and also the branch of said railroad, situate in the State of Alabama, extending from Tuscumbia, on the mainland to Florence, a distance of about five miles, be the same more or less, and including the bridge across the Tennessee River, near Florence ; and also the Washington Street branch so-called of said railroad, extending from the depot of said main line, in the City of Memphis through Washington Street and Centre Landing to the Mississippi River and the depot grounds and wharves on said river, and all the rights and privileges of said Railroad Company in respect of the use of the streets and the wharves and levee on the Mississippi river ; and also all and singular the rights of transportation of the passenger cars and freight cars of the said party of the first part on and over the railroad between Stevenson, in Alabama, and Chattanooga, in Tennessee, which the party of the first part has or is entitled to, or can, or could, now or hereafter claim under or in virtue of the contract of the date of June twenty-third and July twenty-sixth, eighteen hundred and fifty-eight, made between the Memphis and Charleston Railroad Company and the Nashville and Chattanooga Railroad Company, and all the rights and privileges whatsoever, for or in respect of the use of or transportation over the line of railroad between Stevenson and Chattanooga, now belonging to the Nashville, Chattanooga and Saint Louis Railway Company, which the said party of the first part holds or is in any wise en-

titled unto, or can, or could now or at any time 105
hereafter, claim either under or in virtue of the
before-mentioned contract of June and July, eigh-
teen hundred and fifty-eight, or otherwise how-
soever, together with all and singular the roadway
or track of the aforesaid main line of railroad, ex-
tending from Memphis to Stevenson, as aforesaid,
and of the said several branches respectively, and
the superstructure and rails laid or to be laid there-
on respectively, and all the appurtenances thereof,
and all the sidings, turnouts, bridges, wharves, 106
viaducts, culverts, walls, fences, ways and rights of
way, depots, station-houses, engine-houses, car-
houses, freight-houses, wood-houses, depot grounds,
and lands procured, provided, or intended for use
for that purpose, building and repair shops, ma-
chine shops, and lands used or procured, or in-
tended for sites thereof, and other buildings, struc-
tures, lands or improvements whatsoever, leases
and leasehold interests, contracts, easements and
privileges now belonging or appertaining to, or used, 107
or procured, or designed to be used for the pur-
poses of, or in connection with, the said main line
of railroad and branches respectively, or the main-
tenance or operation thereof, or of any part thereof,
or which shall at any time hereafter belong or apper-
tain to, or be used, or procured, or obtained with
the design of being used for the purposes of or in
connection with said main line of railroad and
branches respectively, or the maintenance or opera-
tion thereof, or of any part thereof, and also all the 108
locomotives, tenders, passenger cars, baggage cars,
freight cars and other cars, and all other rolling
stock or equipment, and all machinery, tools and
implements, rails, chairs and spikes, and other ma-
terials whatsoever now owned or possessed by the
said party of the first part, or which shall at any
time or times hereafter be acquired, owned, or pos-

sessed by the said party of the first part, or its successors, for the uses or purposes of, or designed for use, in connection with or for the operation, maintenance or reparation of the said main line of railroad and branches respectively, or the equipment or appurtenances thereof, and all the engines, cars and rolling stock or equipment of any kind, machinery, tools, implements, rails and other materials, which shall at any time or times hereafter belong or appertain to, or be in use, or on hand designed for use, for the purposes of said main line of railroad and branches, respectively, or any part thereof, and all the lands and real estate whatsoever of any and every kind whatsoever, and all improvements thereon, situate in the States of Tennessee, Alabama, and Mississippi, respectively, which are now owned or possessed by, or which now belong to the said party of the first part, and also all and singular the rights, privileges, and franchises whatsoever, which the said party of the first part now holds, possesses, or is entitled unto, and also all franchises, rights and privileges whatsoever, which the said party of the first part shall hereafter acquire or become possessed of, or entitled unto, for and in respect of or for the uses or purposes of the said main line of railroad and branches, respectively, or the operation or maintenance thereof; and also all the tolls and income of the said main line of railroad and branches, respectively, together with all and singular the tenements, hereditaments and appurtenances unto the premises aforesaid, or any of them, or any part thereof, belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the said party of the first part, of, in and to the same and every part and

parcel thereof, with the appurtenances, but subject 113
always to the prior and paramount lien now held by
Adrian Iselin and Adrian Iselin, Junior, upon such
part of the said railroad and branches as is situate
in the State of Tennessee, and upon all the rolling
stock and equipment thereunto belonging or appur-
taining, and upon all that portion of the said hereby
mortgaged premises or property which is situate in
the State of Tennessee, for the amount of the afore-
said indebtedness of said party of the first part,
originally existing in favor of the State of Tennessee, 114
and assigned by said State to, and now held by
Adrian Iselin and Adrian Iselin, Junior, as afore-
said, which lien it is expressly understood and
hereby agreed and declared, is to remain in full
force and effect as a lien in favor of said Adrian
Iselin and Adrian Iselin, Junior, and their repre-
sentatives or assigns, prior and paramount to the
lien created by this indenture, until the indebted-
ness for which such lien is held shall be paid and
satisfied or discharged; and the same is, or is to be, 115
expressly confirmed and further assured by the said
Memphis and Charleston Railroad Company to the
said Adrian Iselin and Adrian Iselin, Junior, and
their representatives and assigns, as a good and
valid lien prior to this Indenture of Mortgage upon
all that part of the hereby mortgaged premises
which is situate in the State of Tennessee, including
the rolling stock or equipment and other chattel
property belonging or appertaining to the portion
of said railroad line, in the State of Tennessee, for 116
the above-mentioned amount of seventeen hundred
and thirty-six thousand nine hundred and six dol-
lars and twenty-five cents, with the interest thereon
accrued and to accrue from and after July first,
eighteen hundred and seventy-seven, and with the
assurance, confirmation and grant by said Railroad
Company to said Adrian Iselin and Adrian Iselin,

117 Junior, of appropriate remedies for enforcing and effectuating said lien and the security thereof, and of the said indebtedness.

To HAVE AND TO HOLD all and singular the said main line of railroad and branches respectively, with their appurtenances and rolling stock and equipment, present and future, and all other the premises, properties, rights, interests and franchises, immunities, privileges and other things aforesaid, subject
118 to the said prior lien in favor of Adrian Iselin and Adrian Iselin, Junior, and their representatives or assigns as aforesaid, unto the said party of the second part, as trustee as aforesaid, and its successors and assigns for ever, in trust for the equal *pro rata* use, benefit and security of all the persons and corporations who shall become or be the owners or lawful holders of any of the said bonds within the aggregate amount of four million seven hundred thousand dollars, intended to be hereby secured as
119 aforesaid, without preference of any of the said bonds over any of the others by reason of priority in the time of the issuing or negotiation thereof, but with such special rights, nevertheless, to the holders of the fourteen hundred of such bonds, numbered from one to fourteen hundred inclusive, as are hereinafter in that behalf declared and provided for.

PROVIDED ALWAYS, nevertheless, and these presents are upon the express condition, that if the said
120 party of the first part shall well and truly pay and satisfy the said bonds to the aggregate amount of four million seven hundred thousand dollars hereby intended to be secured as aforesaid, or such of the same as shall be issued, and the interest from time to time accruing thereon, according to the tenor and effect of the said bonds and the coupons or interest warrants accompanying the same, then this indent-

ure and all and singular the estates, rights and in- 121
terests hereby granted to or vested in the said party of the second part shall cease, determine, and become of no effect.

AND IT IS HEREBY UNDERSTOOD, DECLARED, GRANTED, AGREED AND PROVIDED, that of the aforesaid bonds to the aggregate amount of four million seven hundred thousand dollars designed to be issued under and secured by this indenture as aforesaid, fourteen hundred thousand dollars in 122
amount thereof, being the fourteen hundred of such bonds for one thousand dollars each, numbered from one (1) to 1400 (fourteen hundred) inclusive, are appropriated, designed and intended to be used and applied by the said party of the first part for the purpose and in the manner following; that is to say, the same are to be transferred and delivered by the said railroad company, party of the first part, to the said Adrian Iselin and Adrian Iselin, Junior, as an additional collateral secu- 123
rity to them and their representatives and assigns for the aforesaid indebtedness of the said railroad company originally existing in favor of said State of Tennessee, and assigned and transferred to and now held by said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now amounting, as aforesaid, to seventeen hundred and thirty-six thousand nine hundred dollars and twenty-five cents, besides the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred 124
and seventy-seven, under an arrangement and agreement between said railroad company, party of the first part hereto, and said Adrian Iselin and Adrian Iselin, Junior, by which such transfer and delivery to them of the said fourteen hundred bonds is not in anywise to operate as a payment of or upon account of the said indebtedness held by them under

transfer from the State of Tennessee, nor is the same to diminish, impair or affect the said prior and paramount lien for the amount of such indebtedness, and the interest accrued and to accrue thereon upon the said portion of said railroad situate in the State of Tennessee, with its appurtenances and equipment, and the other property in the said State which originally existed in favor of the State of Tennessee, and is now held by Adrian Iselin and Adrian Iselin, Junior, under transfer from said State as aforesaid; but that notwithstanding such transfer and delivery to said Adrian Iselin, and Adrian, Junior, of said fourteen hundred bonds, the said debt against said railroad company now held by them under transfer from the State of Tennessee, and the lien thereof originally existing in favor of said State, and vested in them by transfer as aforesaid, and all the rights and remedies and securities of said Adrian Iselin and Adrian Iselin, Junior, for the security of such indebtedness originally existing in favor of the State, with the interest accrued and hereafter to accrue thereon, and for enforcement of the lien thereof, are to remain in full force and effect, as if such fourteen hundred bonds had not been transferred and delivered as additional security therefor as aforesaid.

Provided, however, that all sums of money which shall be actually paid by said railroad company on account of interest or principal upon such fourteen hundred bonds, or either of them, either to said Adrian Iselin and Adrian Iselin, Junior, or to any one holding any of such bonds by or under transfer from them, are, when such payments respectively are actually made and realized in cash, and not before to be credited as payments on account of the said original indebtedness to the State of Tennessee assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, reckoning for the purpose of such credit such payments made in gold at the value thereof, in United

States legal tender currency at the time of such pay- 129
ment; which payments received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, are to be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and which payments, if any, received for on account of principal of such fourteen hundred bonds shall be applied on account of the 130
principal of such indebtedness originally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven; and with the further provision in such arrangement that said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to sell or otherwise dispose of and to transfer to any person or persons or corporations any of the said fourteen hundred bonds so transferred and delivered to them as they may deem fit, 131
without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their asssigns in respect thereof, and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of such bonds so sold or so disposed of or transferred, but subject to the aforesaid obligation to give credit on such indebtedness for all payments which shall be made 132
for principal or interest on such bonds so sold or disposed of or transferred when such payments are actually made and realized in cash, qut not before; and under the further understanding and arrangement that said Adrian Iselin and Adrian Iselin, Junior, in anticipation of making sales or dispositions or transfers of such

fourteen hundred bonds or portions thereof, shall be at liberty to assign and transfer the said original indebtedness of the Railroad Company to the State, and the State's lien therefor transferred to them as aforesaid, and all their present and future rights and remedies in respect thereof to a trustee or trustees, to be held for the equal *pro rata* benefit of the holders from time to time of such fourteen hundred bonds, numbers one to fourteen hundred, inclusive, and so as that proportionate beneficial or equitable interests in the said indebtedness originally existing in favor of the State, including the interest thereon accrued and hereafter to accrue, and in the lien which was held by the State therefor, and in the rights and remedies in respect thereof may invest in equitable or beneficial interest in the holders from time to time of such fourteen hundred collateral bonds, numbers one to fourteen hundred, inclusive, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, in respect of so many of said fourteen hundred bonds as may remain in their hands untransferred and undisposed of by them, with *pro rata* equality in proportion to the respective amounts held by such parties respectively of such fourteen hundred bonds, and so that the holder of each of such fourteen hundred bonds, numbers one to fourteen hundred, inclusive, may be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the interest thereon accrued and to accrue, and the said liens and rights held for the security thereof corresponding with the principal and interest of such bond so held by him, and with the proper proportionate addition thereto by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such original indebtness, with its attendant liens and securi-

ties, shall remain in the said trustees to whom the 137
same shall be transferred by the said Adrian Iselin
and Adrian Iselin, Junior, in trust for the holders
of said fourteen hundred collateral bonds, to the end
and intent that notwithstanding any sale or other
disposition or transfer which may be made of such
fourteen hundred collateral bonds, the said original
debt and lien preserved in full force, and the said
bonds held as further collateral security may in
substance and effect be beneficially held by or for
account of the same persons, and that the parties 138
may substantially, in respect of beneficial or equit-
able interests, be in like positions as if the said
original debt and lien and said collateral bonds had
all continued to be held by said Adrian Iselin and
Adrian Iselin, Junior, or had been altogether as-
signed over by them to the same person or persons.

And inasmuch as under such proposed arrange-
ment, and in virtue of the terms and conditions of
this mortgage and the bonds thereby secured, there
will exist a double lien and security for substanti- 139
ally the same amount or indebtedness in favor of
the holders of said debt and lien, originally held by
the State of Tennessee, and assigned over to Adrian
Iselin and Adrian Iselin, Junior, as aforesaid, and
preserved and kept in force in the hands of the trus-
tee, to whom the same is to be assigned as aforesaid,
and of the holders of the said fourteen hundred
bonds, numbers one to fourteen hundred, inclusive,
held as further collateral security therefor, and
which double lien, as to a part thereof, will exist 140
upon the same subject matter—viz: The said rail-
road in Tennessee, with its appurtenances and
equipment, and the other property in the State
which is subject to the State lien, now it is hereby
declared, provided, granted, declared and agreed
that such double lien and security is intended to
and shall exist, and that neither lien or security

shall prejudice the efficacy of the other; that the said State lien, held by assignment as aforesaid, may be enforced, and all rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in favor of the holders of such fourteen hundred bonds as further collateral security, as aforesaid, did not exist, and that the holders, from time to time, of such fourteen hundred bonds, so transferred by way of further collateral security for such original debt, shall be entitled as fully and completely and effectually as if the said original lien and security for the original debt, as further security for which said fourteen hundred bonds are transferred, did not exist to their equal *pro rata* share and proportion in like manner with the holders of the other bonds, numbers (1401) fourteen hundred and one to (4700) four thousand seven hundred inclusive, to be issued under and secured by this mortgage, or such of such other bonds as may from time to time be outstanding, of the benefit of all securities and liens provided by this mortgage, and of the proceeds and fruits thereof, and of any foreclosure or enforcement of the same, including as well the mortgaged premises situate in Alabama and Mississippi as the other mortgaged premises, save and except that if, prior to making apportionment and distribution between the holders of the bonds secured by the indenture of mortgage, of the net proceeds of any foreclosure or other legal enforcement thereof, any net sum shall have been actually collected and realized in cash by means of legal enforcement of the said lien originally held by the State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, by giving proper credit wherefor, after first deducting therefrom all proper expenses and charges incurred in respect of the proceedings for such enforcement

and collection, including the compensation of the 145
said trustee, to whom the same shall be so assigned
by said Adrian Iselin and Adrian Iselin, Junior, in
respect thereof, the then unpaid amount of the said
indebtedness of the railroad company, originally
existing in favor of the State, and by it transferred
over as aforesaid, and as collateral security for
which said fourteen hundred bonds, numbers one to
fourteen hundred inclusive, shall be held as afore-
said, shall be reduced below the principal of such
fourteen hundred bonds and the interest thereon 146
accrued and unpaid at the time of such apportion-
ment and distribution, having due regard to the cir-
cumstance that said bonds are payable in gold, and
therefore reducing the amount of such net credits
or deductions to the value thereof in gold when col-
lected and realized, then, and in such case, for the
purposes of making such apportionment and distri-
bution between the respective bondholders secured
by this indenture of mortgage, of the net proceeds
of such foreclosure or other legal enforcement of 147
this mortgage, the said fourteen hundred bonds,
numbers one to fourteen hundred inclusive, instead
of being reckoned at their face value, with their ac-
crued and unpaid interest, shall be reckoned as be-
ing only for an amount equal to such reduced
amount, computed as aforesaid, remaining unpaid
at the time of such apportionment and distribu-
tion upon the said indebtedness of said railroad
company, originally existing in favor of the State
of Tennessee, and by it transferred over as afore- 148
said, and for which the said fourteen hundred
bonds shall stand as security as aforesaid, and
such apportionment and distribution between said
fourteen hundred bonds and the other then out-
standing bonds hereby secured shall be made ac-
cordingly ; and it being always understood, agreed
and provided that the double lien and security,

as aforesaid, will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction of the same substantial debt, but that all payments actually received and realized in money, by means of either security, will and shall, to the extent of such actual payments realized, go in reduction of said original debt and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

AND IT IS FURTHER DECLARED AND UNDERSTOOD that it will be made a part of the said arrangement between said railroad company and said Adrian Iselin and Adrian Iselin, Junior, that said Adrian Iselin and Adrian Iselin Junior, shall consent so far to reduce the amount of their said claim and demand against said railroad company and the lien and security therefor, under the said assignment and transfer from the State of Tennessee to them, as that, when they or their assigns shall have actually received and realized in cash, by net payments, as on account of the principal of the said indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars in United States gold coin, reducing currency realizations or payments to gold values as aforesaid, and shall likewise have actually received and realized in cash, by net payments, as on account of interest accrueing at the rate of six per cent per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, a sum equal to seven per

cent per annum in United States gold coin, from 153
the first day of July, eighteen hundred and seventy-
seven, payable semi-annually on the first days of
January and July, upon such sum of fourteen hun-
dred thousand dollars gold, until payment and
realization in cash, as aforesaid, of that principal
sum, reducing currency realizations or payments to
gold values as aforesaid, the residue of such cur-
rency indebtedness of seventeen hundred and thirty-
six thousand nine hundred and six dollars and
twenty-five cents, and of the interest accruing 154
thereon, from and after July first, eighteen hun-
dred and seventy-seven, shall be thereupon given
up, released and discharged to the said Railroad
Company; provided, however, as a condition thereof
that said Railroad Company shall bear, pay and
discharge all the expenses and charges attendant
upon the collection and receipt of such monies on
account of the principal or interest, or either of
such indebtedness originally existing in favor of the
State, and of all legal and other proceedings had or 155
taken for the recovery thereof, including the com-
pensation of such trustee in respect of such collec-
tion, receipt and legal and other proceedings; and
that this stipulation and agreement shall bind the
representatives and assigns of said Adrian Iselin
and Adrian Iselin, Junior, including the trustee to
whom such original debt and lien is to be so assigned,
and that for the purposes thereof all cash payments
received and realized for principal or interest upon
such fourteen hundred bonds, numbers one to four- 156
teen hundred inclusive, or any of them, by parties
holding such bonds under transfer from said Adrian
Iselin and Adrian Iselin, Junior, shall be of like
legal affect as if such monies were received by said
Adrian Iselin and Adrian Iselin, Junior.

AND IT IS HEREBY FURTHER PROVIDED, DE-

149 as aforesaid, will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction of the same substantial debt, but that all payments actually received and realized in money, by means of either security, will and shall, to the extent of such actual payments realized, go in reduction of said original debt and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

150 AND IT IS FURTHER DECLARED AND UNDERSTOOD that it will be made a part of the said arrangement between said railroad company and said Adrian Iselin and Adrian Iselin, Junior, that said Adrian Iselin and Adrian Iselin Junior, shall consent so far to reduce the amount of their said claim and demand against said railroad company and the lien and security therefor, under the said assignment and transfer from the State of Ten-
151 nessee to them, as that, when they or their assigns shall have actually received and realized in cash, by net payments, as on account of the principal of the said indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars in United States gold coin, reducing currency realizations or payments to gold values
152 as aforesaid, and shall likewise have actually received and realized in cash, by net payments, as on account of interest accrueing at the rate of six per cent per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, a sum equal to seven per

cent per annum in United States gold coin, from 153
the first day of July, eighteen hundred and seventy-
seven, payable semi-annually on the first days of
January and July, upon such sum of fourteen hun-
dred thousand dollars gold, until payment and
realization in cash, as aforesaid, of that principal
sum, reducing currency realizations or payments to
gold values as aforesaid, the residue of such cur-
rency indebtedness of seventeen hundred and thirty-
six thousand nine hundred and six dollars and
twenty-five cents, and of the interest accruing 154
thereon, from and after July first, eighteen hun-
dred and seventy-seven, shall be thereupon given
up, released and discharged to the said Railroad
Company; provided, however, as a condition thereof
that said Railroad Company shall bear, pay and
discharge all the expenses and charges attendant
upon the collection and receipt of such monies on
account of the principal or interest, or either of
such indebtedness originally existing in favor of the
State, and of all legal and other proceedings had or 155
taken for the recovery thereof, including the com-
pensation of such trustee in respect of such collec-
tion, receipt and legal and other proceedings; and
that this stipulation and agreement shall bind the
representatives and assigns of said Adrian Iselin
and Adrian Iselin, Junior, including the trustee to
whom such original debt and lien is to be so assigned,
and that for the purposes thereof all cash payments
received and realized for principal or interest upon
such fourteen hundred bonds, numbers one to four- 156
teen hundred inclusive, or any of them, by parties
holding such bonds under transfer from said Adrian
Iselin and Adrian Iselin, Junior, shall be of like
legal affect as if such monies were received by said
Adrian Iselin and Adrian Iselin, Junior.

AND IT IS HEREBY FURTHER PROVIDED, DE-

157 CLARED, GRANTED AND AGREED by and between the parties hereto that fourteen hundred and thirty-six thousand dollars in amount of the bonds issuable under and intended to be secured by this indenture, that is to say, such bonds for one thousand dollars each, numbered from 1401 (fourteen hundred and one) to 2836 (twenty-eight hundred and thirty-six), both inclusive, are specially reserved and appropriated for the purpose of taking up and discharging the before-mentioned twelve hundred and ninety-
158 three thousand dollars, in amount of now outstanding first mortgage bonds of said Railroad Company, issued under and secured by its said first mortgage so called, dated May first, eighteen hundred and fifty-four, and said fourteen hundred and thirty-six bonds so appropriated are to be reserved in the hands of the Trustee hereunder, unissued until the same shall be actually applied to such purpose as herein next provided, to which end the said Trustee is hereby authorized to and shall deliver over such
159 reserved fourteen hundred and thirty-six bonds to the said Railroad Company, for use and negotiation by it, when and in proportion as the said Railroad Company shall deliver up to the said Trustee in a cancelled condition such twelve hundred and ninety-three now outstanding first mortgage bonds, the said Trustee delivering over such reserved new bonds to said Company, as aforesaid, at the rate of ten thousand dollars thereof for each nine thousand dollars of principal amount of such now outstand-
160 ing first mortgage bonds, so delivered over in cancelled condition to said Trustee. And it is further provided, declared, granted and agreed that a further amount of one million dollars of the bonds issuable under and intended to be secured by this indenture, that is to say, such bonds for one thousand dollars each, numbered from 2,836 (twenty-eight hundred and thirty-seven) to 3,838 (thirty-

eight hundred and thirty-six), both inclusive, are 161
specially reserved and appropriated for the purpose
of taking up and discharging the before mentioned
one million dollars in amount of now outstanding
ing second mortgage bonds of said railroad
company, issued under and secured by its said,
so called, second mortgage, dated January first,
eighteen hundred and sixty-seven, and said one
thousand bonds so appropriated are to be reserved
in the hands of the Trustee hereunder, unissued,
until the same shall be actually applied to such 162
purpose as herein next provided, to which end the
said Trustee is hereby authorized to, and shall de-
liver over such reserved one thousand bonds to the
said Railroad Company, for use and negotiation by
it, when and in proportion as the said Railroad
Company shall deliver up to said Trustee, in a can-
celled condition, such now outstanding one thous-
and second mortgage bonds, the said Trustee deliv-
ering over such reserved new bonds to said Com-
pany, as aforesaid, at the rate of one thousand dol- 163
lars thereof for each one thousand dollars of princi-
pal of such second mortgage bonds, so delivered to
it in a cancelled condition. And it is hereby pro-
vided, declared and agreed that said party of the
second part must not and shall not permit to be
issued as certified or countersigned by it, the said
twenty-four hundred and thirty-six bonds, numbers
1,401 (fourteen hundred and one) to 3,836 (thirty-
eight hundred and thirty-six), which are reserved
for taking up and providing for such outstanding 164
first and second mortgage bonds, as aforesaid, ex-
cept under and in conformity with the foregoing
provisions and limits in respect thereof: PROVIDED,
HOWEVER, that, in case said Railroad Company
shall arrange with any holders of such now out-
standing first and second mortgage bonds for an
extension of time of payment thereon, and for giv-

ing as additional security therefor, or for the indebtedness represented thereby, such new bonds hereby reserved, for providing for the same at rates not exceeding ten thousand dollars of such new bonds for each nine thousand dollars of such now outstanding first mortgage bonds, and not exceeding one thousand dollars of such new bonds for each one thousand dollars of such now outstanding second mortgage bonds, and for depositing both such old extended bonds, and such new collateral bonds with some responsible Trust Company in the City of New York, or other agreed depository in said City, satisfactory to the party of the second part, under such agreement of trust, or otherwise, as may be fixed upon with a view to avoiding the risk to the Railroad Company, and its other creditors, of a double payment upon such indebtedness thus extended and secured; the said party of the second part hereto shall be, and hereby is, authorized and required to give effect to such arrangement, and to deliver over in accordance therewith such reserved new bonds to such agreed Trust Company, or other depository, anything hereinbefore contained to the contrary notwithstanding.

IT IS FURTHER UNDERSTOOD, DECLARED AND PROVIDED, That as to the issue and negotiation of the bonds issued under and secured by this mortgage other than the twenty-four hundred and thirty-six bonds so appropriated and reserved for taking up said first and second mortgage bonds, the said party of the second part assumes no responsibility and is to exercise no supervision, but is to countersign or certify and deliver over to the said Railway Company for transfer or negotiation by it without supervision the said other bonds—that is to say, those numbered from one to fourteen hundred inclusive, and those numbered from thirty-eight hundred and

thirty-seven to four thousand seven hundred inclu- 169
sive.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED, That the said party of the first part reserves to itself and it shall have and possess the right and privilege, anything hereinbefore contained to the contrary notwithstanding, to agree with the holders of all or any of the said now outstanding first mortgage bonds and second mortgage bonds respectively for an extension of time of pay- 170
ment thereof, at rates of interest not exceeding those which the said bonds now bear, and for preserving, keeping in full force and effect, and if necessary or desirable renewing as a lien or liens prior and superior to the lien of this indenture of mortgage the now existing lien or liens, and security of such first and second mortgage respectively, upon the property and franchises covered thereby; for the unpaid amount of such bonds, including the interest accruing subsequently to such extension, 171
and it shall be competent for the party of the second part hereto, as Trustee hereunder, to execute any instrument, or instruments, expressing its concurrence as Trustee in, or effectuating such preservation, keeping in force and renewing of such lien or liens as above authorized and provided as a lien prior and superior to the lien of this mortgage; provided always, and it is expressly understood, declared and provided, that nothing above contained is to authorize any inter- 172
ference with, or impairment in any respect of the before-mentioned prior and paramount lien upon the said railroad in Tennessee with its appurtenances and equipment, and the other property of said railroad company in that State, now held by said Adrian Iselin and Adrian Iselin, Junior, under transfer from the State of Tennessee, as aforesaid,

and proposed to be transferred in trust for the special security of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, as aforesaid.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED by and between the parties hereto, as follows, that is to say:

First.—In case default shall at any time be made by the party of the first part in the due and punctual payment of any instalment of semi-annual interest at any time becoming due and payable upon any of the said bonds, within the aggregate amount of forty-seven hundred thousand dollars, issued under the security of this mortgage as aforesaid; and if any such interest shall remain in arrear and unpaid for sixty days after demand thereof, then and in such case if, and when thereafter the holders, at the time being, of one-third in amount of the then outstanding bonds, issued under and entitled to the benefit of the security of this mortgage, shall by instrument or instruments executed by them respectively, or their attorneys in fact thereunto duly authorized, and delivered to the party of the second part, or its successor or successors, as trustee hereunder, so elect, the principal sums secured by and payable upon all and singular the said bonds, within the aggregate amount of forty-seven hundred thousand dollars, issued under the security of this mortgage as aforesaid, with all arrears of interest thereon, shall become immediately due and payable, although the time for the payment of said principal, originally stipulated in said bonds shall not yet have arrived, anything in the said several bonds contained to the contrary notwithstanding.

Second.—Until the party of the first part shall have made some default in the payment of the prin-

cipal or interest secured by or payable upon the 177
said bonds hereby intended to be secured, or upon
some of such bonds, or some part of such principal
or interest, or in the performance of some other of
the covenants, stipulations and provisions on the
part of the party of the first part in this indenture
contained, the said party of the first part shall be
entitled to continue in the possession, use and en-
joyment of the said railroad and other mortgaged
premises, properties, rights, interests and franchises,
and in receipt of the income, rents and profits there- 178
of, and while the said party of the first part shall so
remain in possession, and there shall be no such
subsisting default in the payment of interest or
principal, or in the performance of the stipulations,
conditions and provisions on the part of the said
party of the first part in this indenture contained,
the said party of the second part, or its successor or
successors in the said trust, shall have full power
and authority, to be exercised in its or their own
discretion, and not otherwise, to release from the 179
lien and operation of these presents, in such manner
as it or they may deem proper, any portion of the
premises hereby mortgaged which may be appur-
tenant to the said mortgaged railroad, or any part
thereof, including the branches or which may have
been acquired or held for the uses or purposes
thereof, but which, in the judgment of the said
Trustee, shall be no longer requisite for use in con-
nection therewith, or which shall have been acquired
or held for stations, depots, shops or other build- 180
ings, or for supplying fuel, gravel or other material,
and which in the Trustee's judgment shall be no
longer requisite to be kept for such purpose, and
likewise any lands not occupied by the track, which
may become disused by reason of a change in the
location of any station-house, depot, shop or other
building connected with the said railroad, and like-

wise any land occupied by the tracks, and adjacent to such station-house, depot, shop, or other building, which the said party of the first part, its successors or assigns, may deem it expedient to disuse or abandon by reason of such change, and likewise any part of the original line of track or roadway, and of the depot grounds, buildings or accommodations connected therewith, which may have been thrown out of or ceased to form part of the railroad at the time of such release, by reason of straitening *or alteration of the line of the road or otherwise;* PROVIDED, ALWAYS, that the power of release given by this article is designed to be exercised, and shall be exercised only in case of the said railroad company's selling or contracting to sell the property so to be released, because of its being no longer required for the uses or purposes of said railroad, and requiring the same to be so released in order to give a perfect title to the purchaser or purchasers; AND PROVIDED FURTHER, that when such released premises shall have been thrown out of use, or ceased to be required, by reason of change of the line of the road, or change of depot grounds, buildings or other accommodations, the substitutes therefor shall be conveyed by appropriate deeds to the trustee, upon the trusts and for the uses and purposes of this indenture, before the giving of such release under the power contained in this article. AND PROVIDED FURTHER that as there are depot grounds in the city of Memphis of much greater extent and value than is required for the uses of said railroad, and which may be advantageously and properly sold and disposed of in aid of the general funds of the said railroad company and without procuring substitutes therefor, it is understood and provided that under the foregoing power the trustee may properly release such surplus depot grounds upon the same being sold, and without re-

ceiving any substitute therefor. And the said Trus- 185
tee shall likewise have full power to allow the said party of the first part, its successors or assigns, from time to time, to sell and dispose of such portion of the equipment, machinery and implements which shall be at any time held or acquired for the use of said railroad, as shall have become worn out or unfit for such use; PROVIDED, HOWEVER, that the same shall be adequately replaced by other equipment, machinery and implements, and all such other equipment, machinery and implements, which may 186
be acquired in substitution as aforesaid, shall, by virtue and force hereof, become and be immediately upon the acquisition of the same, subject to the lien and operation of these presents, without any new conveyance or transfer or other act or ceremony whatever, but such new conveyance and transfer shall be given to the trustee or trustees, if it or they shall require or request the same.

Third. The said party of the first part doth 187
hereby covenant, promise and agree, to and with the said party of the second part, and its successors in the trust hereby created, that while the said party of the first part shall remain in possession of the said railroad, it shall and will, from time to time, pay and discharge all taxes, assessments, and governmental charges, lawfully imposed upon the said railroad and branches, and other hereby mortgaged premises, or upon any part thereof, the lien of which might or could be held to be prior to the lien 188
of these presents, so that the priority of this mortgage may be duly preserved, and that the said party of the first part shall not and will not do or suffer any matter or thing whatsoever, whereby the lien of this Indenture of Mortgage might or could be impaired, until the said bonds hereby secured with all interest accrued thereon, shall be fully paid and satisfied.

189 *Fourth.* In case default shall be made in the payment of any semi-annual instalment of interest, which may have accrued upon the said bonds hereby secured, or upon any of them, when such interest shall become or be due and be demanded, and if such interest or any part thereof, shall remain unpaid and in arrear for the period of sixty days, after demand thereof made according to the tenor of the coupon representing the same, or according to the tenor of the bond ; or in case default shall be made in the
190 due observance and performance of the covenant for further assurance hereinafter contained ; or in case default shall be made by said railroad company in the payment of any taxes, assessments or other governmental charges, which may be lawfully levied or imposed upon the said mortgaged railroad, and premises, or any part thereof, and the lien whereof might or could be held prior to the lien of these presents, and if any such default as last above mentioned shall continue for the pe-
191 riod of sixty days after notification to the said Railroad Company, of the existence of such unpaid taxes, assessments and other governmental charges, and request to said Railroad Company to make payment thereof, shall have been made or given by the Trustee under this mortgage, or by the holders of bonds secured hereby to the aggregate amount of not less than three hundred thousand dollars ; or in case default shall be made in the payment of the principal of said bonds hereby secured, or any of
192 such bonds, when such principal shall be due and payable, then, and in any and every such case of default made, in any particular aforesaid, and provided such default be continued as aforesaid, where such continuance is above called for, the said party of the second part, or its successor or successors in the said trust, may, either personally or by agent or attorney, enter into and upon the said Rail-

road and other mortgaged premises, properties and 193
rights, and have, hold and possess the same, with
the rights, privileges and franchises thereunto ap-
pertaining, and operate the said Railroad by such
superintendents, managers, receivers, assistants,
servants and agents, as the said Trustee shall deem
proper, making from time to time all such repairs
and replacements, and all such useful alterations,
additions and improvements to the said Railroad,
and other mortgaged property, as the said Trustee
may deem expedient and judicious, and as the in- 194
come of the said mortgaged premises coming to the
Trustees, hands shall be adequate to pay for. And
it shall be lawful for the Trustee or Trustees, after
entry and possession as above authorized, to collect
and receive all fares, freights, issues, profits and in-
come of the said Railroad and other mortgaged
premises, and to deduct and retain and pay there-
from all the lawful expenses or charges of, or inci-
dent to, making such entry or obtaining possession
of said premises, and the proper expenses and 195
charges of or incidental to the holding, operating
and managing the said Railroad and premises and
conducting the business thereof, including the ex-
pense of all such repairs, replacements, alterations,
additions, and improvements as above authorized,
and all payments which may be made or be due for
taxes, assessments or other charges, or liens prior
to the lien of these presents, upon the said Railroad
and premises, or upon any part or parcel thereof,
as well as just and reasonable compensation for the 196
Trustee's services in the premises, and for the ser-
vices of such attorneys and counsel as may have
been by it or them properly employed in respect
thereof; and after making all such deductions and
payments as aforesaid, the Trustee or Trustees shall
apply the net residue of such fares, freights, issues,
profits, and income remaining in its or their hands,

to the payment in the first place, of all overdue interest on the bonds hereby secured, or any of them, with the interest accrued on such amount of interest after default in its payment, in the order in which such interest shall have become due, rateably to the person holding the bonds, or coupons evidencing the right to such interest, and without discrimination or preference between them on account of the time of the actual issue of said bonds, and in the next place, to the payment of such interest accruing or becoming due, during such possession of the Trustee or Trustees, in the order in which such interest shall fall due, rateably, and without any preference of one bond or coupon over another, save the said preference accorded to earliest maturing coupons, and if, in any six months of the possession by the Trustee or Trustees, after payment of all matured interest on the said bonds, a surplus of net income arising as aforesaid shall remain in the hands of the Trustee or Trustees, it shall be lawful for the Trustee or Trustees to pay over such surplus to the said party of the first part, its successors or assigns, or as any Court of competent jurisdiction shall lawfully direct, and thereupon to deliver possession of said Railroad and other mortgaged premises to the party of the first part, to be thenceforward possessed by it, subject to the lien of this mortgage, and to the Trustee's right again to take possession in case of future default entitling possession to be taken as hereinbefore specified.

Fifth. In case default shall be made in the payment of any semi-annual instalment of interest, which may have accrued upon the said bonds within the aggregate amount of four million seven hundred thousand dollars hereby secured, or in the payment of such interest upon any of said bonds, when such

interest shall have become or be due, and be de- 201
manded, and if any such interest, or any part there-
of, shall remain unpaid and in arrear for the period
of sixty days after demand thereof made, accord-
ing to the tenor of the coupon representing the same
or according to the tenor of the bond, or in case de-
fault shall be made in the payment of the principal
of the said bonds hereby secured, or of any of such
bonds, when such principal shall be due and pay-
able, it shall be lawful for the said party of the sec-
ond part, or its successor or successors in trust 202
hereby created, either after entry made upon the
mortgaged premises, as aforesaid, or without any
such entry, either personally, or by attorney, or
agent, duly constituted therefor by the said Trustee
or Trustees, to sell and dispose of all and singular
the said railroad and other premises, properties,
rights and franchises, which shall then remain sub-
ject to the lien and operation of this Indenture of
Mortgage, at public auction to the highest bidder,
either in the City of New York, or in the City of 203
Memphis, in the State of Tennessee, as the said
Trustee or Trustees may, in its or their discretion,
designate, and at such time as it or they may ap-
point therefor; provided, however, and it is hereby
declared and agreed, that preparatory to such auc-
tion sale, as aforesaid, the said Trustee or Trustees
shall give public notice of the time and place, when
and where the same is to be made, and of the prop-
erty to be sold, by advertisement in two newspapers,
published in each of the States of Tennessee, Ala- 204
bama, and Mississippi, and in two newspapers of
good circulation, published in the City of New York,
and that such advertisement shall be published in
each of such newspapers, at least twice in each
week, for the twelve successive weeks next previous
to the day fixed for such sale, with the right, how-
ever, to the Trustee or Trustees, after such notice

shall have been so published, to adjourn the sale so advertised, from time to time in the discretion of the Trustee or Trustees, giving reasonable notices of such adjournment or adjournments, and after so adjourning, to make the sale at the time to which it may be finally adjourned. And it shall be lawful for the said Trustee or Trustees, and it or they are hereby expressly authorized and empowered, upon making any such auction sale of said mortgaged premises and property, rights and franchises as above authorized, to make and deliver to the purchaser or purchasers thereof, at such sale, upon his or their paying the purchase money therefor, a good and sufficient deed or deeds of conveyance in the law of the same, which auction sale and the deed or deeds thereof made as above authorized, it is hereby granted, declared and agreed, shall be good and valid in the law, and shall operate to vest in the grantee or grantees in such conveyances the said railroad and branches and other mortgaged premises, properties, rights and franchises, in fee simple and absolutely, and such deed or deeds shall operate to foreclose all equity of redemption of the said party of the first part, and its successors or assigns, and shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and against any and all persons or corporations claiming or to claim such premises, properties, rights and franchises so sold and conveyed, or any part thereof, by, from, through or under the said party of the first part or its successors or assigns.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED, that from the proceeds of such sale made as aforesaid, the said Trustee or Trustees shall be entitled in the first place to deduct and retain or pay for all proper charges or expenses of or incident

to such advertisement, foreclosure and sale and conveyance, including attorneys' and counsels' fees, and any and all unreimbursed advances, expenses, charges and liabilities which may have been properly made or incurred by such Trustee or Trustees in maintaining or operating the said railroad, or in managing the business of the same while it shall have remained in the Trustees' possession, or in arranging for and completing the sale aforesaid; and also all payments which may have been made by the Trustee or Trustees for taxes or assessments, and for charges or liens prior to the lien of this indenture, if any such there shall be, on the said railroad and premises so sold, or any part thereof, as well as the just and reasonable compensation for the services of such trustee or trustees in the premises, and the said trustee or trustees shall apply the residue of the proceeds of such sale, after the deductions and payments above authorized to be first made thereout, to the payment of the principal of the said bonds within the amount of four millions seven hundred thousand dollars, by this mortgage secured, or intended so to be, or of such of said bonds as may at that time remain outstanding and unpaid, whether such principal shall or shall not, by the terms or conditions of said bond, have then fallen due and become presently payable, and likewise to the payment of the interest which shall have accrued up to that time upon the principal of the said bonds hereby secured, and which shall remain unpaid and properly payable with any interest accrued on such interests after default, without discrimination or preference as between principal and interest, but ratably according to the aggregate amount of such unpaid principal and accrued and unpaid interest, which payments shall be made to the persons holding respectively the bonds and coupons evi-

shall have been so published, to adjourn the sale so advertised, from time to time in the discretion of the Trustee or Trustees, giving reasonable notices of such adjournment or adjournments, and after so adjourning, to make the sale at the time to which it may be finally adjourned. And it shall be lawful for the said Trustee or Trustees, and it or they are hereby expressly authorized and empowered, upon making any such auction sale of said mortgaged premises and property, rights and franchises as above authorized, to make and deliver to the purchaser or purchasers thereof, at such sale, upon his or their paying the purchase money therefor, a good and sufficient deed or deeds of conveyance in the law of the same, which auction sale and the deed or deeds thereof made as above authorized, it is hereby granted, declared and agreed, shall be good and valid in the law, and shall operate to vest in the grantee or grantees in such conveyances the said railroad and branches and other mortgaged premises, properties, rights and franchises, in fee simple and absolutely, and such deed or deeds shall operate to foreclose all equity of redemption of the said party of the first part, and its successors or assigns, and shall be a perpetual bar, both in law and equity, against the said party of the first part, its successors and assigns, and against any and all persons or corporations claiming or to claim such premises, properties, rights and franchises so sold and conveyed, or any part thereof, by, from, through or under the said party of the first part or its successors or assigns.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED, that from the proceeds of such sale made as aforesaid, the said Trustee or Trustees shall be entitled in the first place to deduct and retain or pay for all proper charges or expenses of or incident

to such advertisement, foreclosure and sale and con- 209
veyance, including attorneys' and counsels' fees, and any and all unreimbursed advances, expenses, charges and liabilities which may have been properly made or incurred by such Trustee or Trustees in maintaining or operating the said railroad, or in managing the business of the same while it shall have remained in the Trustees' possession, or in arranging for and completing the sale aforesaid; and also all payments which may have been made by the Trustee or Trustees for taxes or 210
assessments, and for charges or liens prior to the lien of this indenture, if any such there shall be, on the said railroad and premises so sold, or any part thereof, as well as the just and reasonable compensation for the services of such trustee or trustees in the premises, and the said trustee or trustees shall apply the residue of the proceeds of such sale, after the deductions and payments above authorized to be first made thereout, to the payment of the principal of the said bonds within 211
the amount of four millions seven hundred thousand dollars, by this mortgage secured, or intended so to be, or of such of said bonds as may at that time remain outstanding and unpaid, whether such principal shall or shall not, by the terms or conditions of said bond, have then fallen due and become presently payable, and likewise to the payment of the interest which shall have accrued up to that time upon the principal of the said bonds hereby secured, and which shall remain unpaid and prop- 212
erly payable with any interest accrued on such interests after default, without discrimination or preference as between principal and interest, but ratably according to the aggregate amount of such unpaid principal and accrued and unpaid interest, which payments shall be made to the persons holding respectively the bonds and coupons evi-

dencing the right to such principal and interests, without any discrimination or preference between them on account of the time of the actual issuing of the bonds or of the time of maturing of the interest or principal, and always subject to and in accordance with the special provisions hereinbefore contained relating to the said fourteen hundred of such bonds, numbers one to fourteen hundred inclusive, and it being understood and hereby declared and agreed that upon any sale of said railroad and other mortgaged premises which may be made as aforesaid, or upon any sale thereof made under or by virtue of the judgment or decree of any Court of competent jurisdiction rendered in any suit or proceeding for the enforcement or foreclosure of the lien created by this Indenture of Mortgage, the principal of all the then outstanding bonds secured by these presents shall become and be immediately due and payable. And it is further declared and agreed that the receipt of the trustee or trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their heirs or assignee or personal representatives, shall not, after paying such purchase money and receiving such trustee's receipt therefor be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase money by the trustee or trustees.

And the said party of the first part doth hereby further covenant that it will, if and when thereunto requested, make, execute and deliver such deeds or other instruments as shall be reasonably advised by counsel to confirm and assure such title and ownership as aforesaid to such purchaser or purchasers at such sale made as above authorized so as fully to effectuate said sale.

And the said party of the first part for itself, its successors and assigns, hereby agrees to waive, and doth hereby absolutely and irrevocably waive and relinquish the benefit or advantage of any and all valuation, stay, or appraisement, extension or redemption law or laws, now existing or which may hereafter be passed by either of the States of Tennessee, Alabama and Mississippi, which but for this provision, agreement and waiver might be applicable to the sale hereinbefore authorized to be made by the trustee or trustees of the said railroad and other mortgaged premises, or to any judicial sale which may be made of said mortgaged railroad and premises, or any part thereof, under and in virtue of the judgment or decree of any competent Court in a suit instituted for the foreclosure of this mortgage or for enforcement of the lien by this indenture created, and the said party of the first part for itself, its successors or assigns, agrees to waive and doth hereby irrevocably waive any and all right of redemption which it might or could otherwise have or be entitled to, under any present or future law of either of the three States of Tennessee, Alabama and Mississippi, upon or after or in respect of any sale of the said hereby mortgaged premises, properties, rights and franchises, or any part thereof, which may be made either by the Trustee or Trustees under the power hereinbefore contained, or as a judicial sale under order or decree of a court in a suit for foreclosure of this mortgage or enforcement of its lien as aforesaid, and the said party of the first part hereby covenants that it will not in any manner set up or seek to take the benefit or advantage of any such present or future valuation, stay, appraisement, extension or redemption law, to prevent or hinder or delay the absolute and irredeemable sale of said mortgaged premises, properties, rights and fran-

chises, as hereinbefore authorized to be made by the Trustees, or as might, but for such law, be directed or decreed by a court of competent jurisdiction.

"AND IT IS HEREBY FURTHER PROVIDED, DECLARED AND AGREED, that in case of such auction sale as hereinbefore authorized being made by the party of the second part, or its successor or successors in the said trust, or in case of any judicial sale being made of the said railroad and other premises, properties, rights, and franchises, hereby mortgaged or any part thereof, in enforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for and payment of the purchase money bidden at such sale, to turn in and use towards the payment of such purchase money, any of the bonds or coupons held by such purchaser or purchasers, to or towards the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds or coupons for such purpose, at such sum as shall be payable out of the net proceeds of such sale to such purchaser or purchasers, as holder or holders of such bonds or coupons, for his or their just share or proportion, in that character, of such net proceeds of sale upon due apportionment of and accounting concerning such net proceeds, due receipts and acknowledgments being thereupon given by the holders of such bonds or coupons for the amount thus realized thereon, by means of turning in and using the same as aforesaid, and said bonds or coupons being either delivered up to the person or persons making the sale, and entitled to receive payment of the purchase money, or due endorsement being made thereon of the amount so realized on account thereof.

Sixth. Whenever there shall have occurred such

continued default, in the payment of either interest 225
upon or principal of the bonds, secured by this Indenture of Mortgage, or upon, or of any of such bonds as in virtue of the preceding provisions of this Indenture shall entitle the Trustee or Trustees to proceed to advertise and sell the mortgaged premises as aforesaid, it shall be obligatory upon the said Trustees, upon being thereunto requested by the holders of so many as one-third in amount of the then outstanding bonds secured by this Indenture, by an instrument or instruments in writing to such 226
effect, executed by such bondholders or their duly authorized attorneys in fact, to proceed either to assert the power of sale hereinbefore conferred upon the Trustee, or to institute and carry on, with the advice of competent attorneys and counsel, legal proceedings in a court or courts of competent jurisdiction, for the enforcement and protection of the rights of the Trustees and the bondholders in the premises, and for foreclosure of this mortgage, enforcement of the lien thereof, and a judicial sale of said 227
mortgaged premises or properties, rights and franchises, and immunities, it being hereby expressly declared, granted, agreed and provided, that the right to proceed by suit or suits, or other appropriate legal proceedings in a court or courts of competent jurisdiction shall exist, and is and shall be in no wise prejudiced by the power of entry, or by the power of sale, or any of the other provisions hereinbefore contained, and it shall in the event of such request by bondholders as aforesaid, be in the 228
discretion of the Trustee or Trustees, under the advice of competent counsel, to adopt and pursue such one of the two courses above mentioned as to such Trustee or Trustees shall seem most expedient; PROVIDED, HOWEVER, and it is a condition of the obligations of the Trustee or Trustees to adopt either course, or to take any steps for the fore-

closure or enforcement of this mortgage or any steps for entry into possession of the mortgaged premises under the power in that behalf hereinbefore contained, that the Trustee or Trustees before actually taking any such steps or proceedings of any kind, shall have the right to require the bondholders calling upon it or them so to do, to furnish to it or them reasonable indemnity for, and provision for the payment, as and when required of the costs, charges and expenses of, or incident to such steps or proceedings.

Seventh. The trustee under this indenture, or its successor or successors, may at any time be removed from the trust, by instrument in writing under the hands and seals of the holders of a majority in amount of the then outstanding bonds secured hereby, or their attorneys in fact thereunto authorized.

AND IT IS FURTHER DECLARED, PROVIDED AND AGREED, that in case a vacancy shall at any time exist in a trusteeship hereunder, by reason of removal, death or mental incapacity of the trustee or trustees for the time being, or either of them, or of the resignation of any such trustee accepted, in writing, by a majority in interest of the bondholders or by a court of competent jurisdiction, or of a vacancy in such trusteeship otherwise lawfully occurring and existing, a majority in amount of the holders of the then outstanding bonds, issued under and secured by this indenture of mortgage, shall have the right and power, by instrument in writing under hand and seal, to appoint a new trustee or trustees, to fill such vacancy; and, in case the vacancy shall be caused by the party of the second part, or any corporation appointed in its place ceasing to be trustee, such vacancy may be so filled by the bondholders by the appointment, as trustee, of

another corporation having lawful power to execute such trust, or of one or more individual trustees; and until the appointment of a trustee or trustees, to fill any vacancy, shall have been made by the majority in amount of the said bondholders under the power in that behalf above contained, the Board of Directors, for the time being, of the party of the first part may appoint a new trustee or trustees to fill such vacancy for the time being; and in case of any vacancy being filled by such appointment by the Board of Directors, it shall be competent for any court of equitable powers, having jurisdiction in the premises, upon the application of any of the bondholders holding not less than five hundred thousand dollars in amount of such bonds, to annul such appointment, and appoint a trustee or trustees in place of the trustee or trustees so appointed by the directors, to hold the trust for the like term as he or they would have held the same under the appointment of the said directors, but no longer, and if the directors shall omit to fill the vacancy it may be filled by a court in the manner and with the effect last above provided and upon the like tenure.

And in case of any vacancy occurring and not being filled by a majority in amount of the bondholders, under the preceding provisions in that behalf, it shall be the duty of the president of the said railroad company to call a meeting, on a notice of at least three weeks, published once a week, for three successive weeks, in two newspapers, of good circulation, published in the City of New York, of the bondholders, to be held in the City of New York, to appoint a trustee or trustees to fill the vacancies so existing, or which shall have existed; but, nevertheless, such vacancy may be filled without waiting for and irrespective of any such meeting, by instrument or concurrent instruments,

under hand and seal of a majority in interest of such bondholders, and any appointment of a trustee or trustees to fill such vacancy existing or which shall have existed, whether made at such meeting, called as aforesaid, or otherwise, provided it be under the hands and seals of a majority in amount of the holders of the then outstanding bonds hereby secured, or their attorneys in fact thereunto authorized, but not otherwise, shall be valid and effectual, and shall supersede any previous appointment of a trustee, to fill such vacancy, which may have been made by the board of directors of the said company, or by a Court under any of the preceding provisions hereof.

AND IT IS HEREBY PROVIDED, DECLARED AND AGREED that the due appointment of a trustee or trustees, in any of the modes herein provided, shall be effectual to vest in such truestee or trustees the appropriate estate, rights, powers and duties as herein provided in that behalf, without any new deed or conveyance; but, nevertheless, the said railroad company hereby covenants, in any and every such case, to make and execute, upon request, any such deeds, conveyances or assurances as may be appropriate for more fully and certainly vesting in and confirming to such new trustee such estate, rights, powers and duties, and in every case of resignation of a trustee, the resigning trustee shall, if requested, make and execute such deeds, conveyances or assurances to his successor.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED AND AGREED that whenever, and as often as any occasion shall arise in which the action of a majority in amount of the said bondholders, in pursuance of any power or provision herein contained, shall be called for or be appropriate, a meeting or meetings,

from time to time, of such bondholders, to be held 241
in the City of New York, may be called by the trustee under this indenture, or by such bondholders holding bonds to an aggregate amount of five hundred thousand dollars, upon notice of advertisement, published for not less than three weeks successively, at least once in each week, in two newspapers published in the City of New York, and that the expenses of calling, advertising and holding any such meeting, and of any adjournment thereof, shall be a claim against and charge upon the trust 242
funds or property held in trust hereinunder, and shall be paid by the trustee out of any trust funds in its or their hands.

Eighth. The trustee or trustees hereunder shall be entitled to receive reasonable compensation for all services performed by it or them in or about the execution of the trusts hereby created. And it is hereby further provided, declared and agreed that in case of the 243
trustee or trustees hereunder entering upon and taking possession of the said railroad and other mortgaged premises or property in consequence of default made by said railroad company, under or in pursuance of the power and authority in that behalf hereinbefore conferred upon the trustee, it shall be lawful and competent for such trustee or trustees to employ an agent or agents for the performance of any such duties, acts and things in and about taking and maintaining such possession, and using, 244
operating and managing the said railroad, and collecting the income, earnings and profits thereof, and making repairs and improvements as above authorized, as such trustee or trustees may deem fit, and for the performance of any other acts in and about such possession and management, the performance whereof can be properly delegated to an agent; and

that such trustee or trustees, provided it or they shall have exercised reasonable prudence and care in the selection and employment of such agent or agents for any such purposes, shall not be responsible for losses or damages in the premises caused by the act, neglect or default of such agent or agents. But this provision is not intended, and shall not be construed, so as to exempt the trustee or trustees, in case of sale being made of the said mortgaged premises, from due responsibility to the bondholders hereby secured for the due application of the proceeds of such sale received, either by the trustee or trustees or by any agent or agents whom it or they may see fit to employ to receive such proceeds of sale.

Ninth. And this indenture further witnesseth that the said party of the first part, for the considerations aforesaid, has covenanted, promised and agreed, and does hereby covenant, promise and agree to and with the said party of the second part, and its successors in the trust hereby created, that the said party of the first part and its successors shall and will well and truly pay or cause to be paid unto the respective holders of the said bonds for four million seven hundred thousand dollars, issued under and secured by this mortgage, the principal thereof and the interest thereon, as the same shall from time to time become payable, according to the tenor of said bonds and the coupons accompanying the same respectively.

AND the said party of the first part, for the consideration aforesaid, doth hereby covenant and agree to and with the said party of the second part and its suceessor or successors, as Trustee, and likewise to and with the holders, from time to time, of the several bonds issued under and secured by this Indenture, that

the said party of the first part, its successors and assigns, shall and will, from time to time, and at all times hereafter, upon reasonable request, make, do, execute, acknowledge and deliver all such further acts, deeds, conveyances and assurances in the law, for the better and more effectually assuring, conveying and confirming unto the said Trustee and its successors or successor in the trust hereby created upon the trusts and for the uses and purposes herein expressed or intended, all and singular the railroad and equipment, premises, properties, rights and franchises hereby mortgaged or conveyed in trust, or agreed, or purporting or intended so to be, whether now owned or possessed by or vested in said party of the first part, or subsequently acquired by or vested in it, as by such Trustee or Trustees or bondholders, under the advice of counsel, shall be reasonably advised, devised or required.

249 250

AND WHEREAS, it is intended that the said party of the second part hereto shall be the Trustee to whom in trust for the security and benefit of the holders of the said fourteen hundred bonds, numbers one to fourteen hundred, inclusive, shall be assigned by Adrian Iselin and Adrian Iselin, Junior, the above-mentioned indebtedness of the said Railroad Company originally existing in favor of the State of Tennessee, and the State's lien therefor assigned to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, it is hereby declared and agreed that such circumstance of the said party of the second part being so made Trustee of such special trust created and special and additional security so given for the special, separate and exclusive benefit of the holders of said fourteen hundred bonds, numbers one to fourteen hundred, inclusive, shall not be deemed in any wise inconsistent

251 252

253 with the Trusteeship or position of the said party of the second part as Trustee hereunder for all said bondholders; and such Trusteeship of the party of the second part hereunder shall in no wise detract from, affect or impair the special and exclusive rights and securities of the holders of said fourteen hundred bonds, held by them through the Trusteeship of the party of the second part hereto, for their separate use and benefit under such trust created by said Adrian Iselin and Adrian Iselin,
254 Junior.

And the said party of the second part doth hereby accept the trusts hereby created. And the said party of the second part, as Trustee hereunder, and its successors, are hereby released from executing the bond required from Trustees by the laws of Tennessee, Alabama or Mississippi, respectively, and from giving any bond or security as Trustee or Trustees under this indenture.

255 IN WITNESS WHEREOF the said party of the first part, in pursuance of a resolution of its Board of Directors, hath hereto affixed its corporate seal, and caused the same to be attested by its President and Secretary; and the said party of the second part, in pursuance of authority of its Board of Directors, hath hereto affixed its corporate seal, and caused the same to be attested by its President and Secretary, the day and year first above written.

256 THE MEMPHIS AND CHARLESTON RAILROAD CO.

BY R. T. WILSON, *President.*

[Seal.]

THE MEMPHIS AND CHARLESTON RAILROAD CO.

BY S. R. CRUSE, *Secretary.*

FARMERS LOAN AND TRUST CO.

BY R. G. ROLSTON, *President.*

[Seal.]

STATE OF NEW YORK,
City and County of New York, } ss: 257

BE IT REMEMBERED, that on this 20th day of August, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Tennessee in and for the State of New York, residing in said City of New York, personally appeared RICHARD T. WILSON, to me personally known and known to me to be the President of the Memphis and Charleston Railroad Company, the grantor described in and who executed the foregoing instrument, and being by me duly sworn, did personally depose and say: That he was such President of the said Memphis and Charleston Railroad Company, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company is the corporate seal of said Company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such President by like authority—and the said RICHARD T. WILSON, President of said Memphis and Charleston Railroad Company, the bargainor in the foregoing instrument, with whom I am personally acquainted, also acknowledged that he executed the foregoing instrument for the purposes therein contained as his own act and deed as such President and the act and deed of said Company. And on the same day before me also personally appeared ROSEWELL G. ROLSTON, to me personally known and known to me to be the President of the Farmers' Loan and Trust Company of New York, and being by me duly sworn, did depose and say: That he was the President of said Farmers' Loan and Trust Company, New York; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of that Company, is the corporate seal of that Company, and was thereunto affixed by said authority of said corporation, and that he sub- 258 259 260

scribed his name thereto as such President by like authority. And the said ROSEWELL G. ROLSTON, the President of the said Farmers' Loan and Trust Company of New York, Trustee in the foregoing instrument named, with whom I am personally acquainted, also acknowledged that he had executed the foregoing instrument for the purposes therein contained as his own act and deed as such President, and the act and deed of said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 20th day of August, A. D. 1877.

[L.S.] CHARLES NETTLETON,
Commissioner for Tennessee in New York,
117 Broadway, New York City.

STATE OF NEW YORK, }
City and County of New York, } ss.:

BE IT REMEMBERED, that on this 20th day of August, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Mississippi, in and for the State of New York, residing in said City of New York, personally appeared RICHARD T. WILSON, to me personally known, and known to me to be the President of the Memphis and Charleston Railroad Company, the grantor described in, and who executed the foregoing instrument; and being by me duly sworn, did personally depose and say: That he was such President of the said Memphis and Charleston Railroad Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company, is such corporate seal, and was thereunto affixed by said authority of said corporation, and that he sub-

scribed his name thereto as such President by like authority; and the said RICHARD T. WILSON also acknowledged that he signed, sealed and delivered the foregoing instrument as his act and deed as such President, and the act and deed of said Company. And on the same day before me also personally appeared ROSEWELL G. ROLSTON, to me personally known, and known to me to be the President of the Farmers' Loan and Trust Company of New York, and being by me duly sworn, did personally depose and say: That he was the President of the said Farmers' Loan and Trust Company of New York; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of that Company, is the corporate seal of that Company, and was thereto affixed by said authority of said corporation, and that he subscribed his name thereto as such president by like authority; and the said Rosewell G. Rolston also acknowledged that he signed, sealed and delivered the foregoing instrument as such president as the act and deed of said company, and his own act and deed as such president.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 20th day of August, A.D. 1877.

[L.S.] CHARLES NETTLETON,
Commissioner for Mississippi in New York,
117 Broadway, New York City.

STATE OF NEW YORK, } ss.
City and County of New York. }

BE IT REMEMBERED, that on the 20th day of August, A.D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Alabama in and for the State of New York, residing in said

City of New York, personally appeared RICHARD T. WILSON, to me personally known, and known to me to be the President of the Memphis and Charleston Railroad Company, the grantor described in, and who executed the foregoing instrument, and, being by me duly sworn, did personally depose and say: That he was such President of the said Memphis and Charleston Railroad Company, that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority; and the said RICHARD T. WILSON, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily, on the day the same bears date, as his act and deed as such president, and the act and deed of said company. And on the same day before me also personally appeared ROSEWELL G. ROLSTON, to me personally known, and known to me to be the President of the Farmers Loan and Trust Company of New York, the trustee described in, and who executed the foregoing instrument, and, being by me duly sworn, did personally depose and say that he was such President of the said Farmers Loan and Trust Company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, is the corporate seal of said company, and was thereunto affixed by said authority of the said corporation, and that he subscribed his name thereto as such president by like authority. And the said Rosewell G. Rolston, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of

said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed as such president, and the act and deed of said company.

In witness whereof, I have hereunto set my hand and affixed my official seal this 20th day of August, A.D. 1877.

[L.S.] CHARLES NETTLETON,
Commissioner for Alabama in New York.
117 Broadway, New York City.

RESPONDENT'S EXHIBIT No. 2.

W. H. D. L., *Sp'l Ex'r.*

An Indenture, made this twenty-first day of August, eighteen hundred and seventy-seven, between Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, parties of the first part; The Farmers' Loan and Trust Company, a corporation created by the laws of the City of New York, party of the second part, and The Memphis and Charleston Railroad Company, a corporation created and organized by and under the laws of the respective States of Tennessee and Alabama and Mississippi, party of the third part.

Whereas, the said The Memphis and Charleston Railroad Company heretofore became indebted to the State of Tennessee for and in respect of the bonds of that State, loaned or advanced or delivered to or in aid of the said Railroad Company, under and in pursuance of the General Internal Improvement laws and other laws of that State, and for the amount of which indebtedness the State of Tennes-

277 see held a statutory first lien in the nature of a mortgage on all that part of the railroad, as well branch as main line of the said The Memphis and Charleston Railroad Company, which is situated in the said State of Tennessee, with the lands and premises thereunto appertaining, and the rolling stock or equipment and other appurtenances thereof, and the other property of said Railroad Company, situated in the said State of Tennessee.

278 AND WHEREAS, under and in pursuance of and in accordance with the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the other laws of said State of Tennessee in that behalf, the said the Memphis and Charleston Railroad Company and the Board of Directors thereof heretofore gave their approbation and consent in writing, that
279 the said Adrian Iselin and Adrian Iselin, Junior, might pay, so far as the State of Tennessee was concerned, the amount of the said indebtedness of the said Railroad Company to said State of Tennessee, and coupons of such bonds at par, as provided for by the laws of the said State of Tennessee in that behalf, and that they might thereby and thereupon become substituted and entitled to all the liens against said Company for the payment of said debt, which the said State of Tennessee had by law, as by
280 the sixth section of the Act aforesaid is provided; and further, the said Adrian Iselin and Adrian Iselin, Junior, should thereupon, as provided for by seventh section of the Act aforesaid, be entitled to have and to hold all the lien or liens which the said State of Tennessee had upon said railroad or its property, and should have the same right to enforce the same which the said State of Tennessee

had, the object and intent being thereby declared to 281
be to place the said Adrian Iselin and Adrian Iselin, Junior, so paying the amount of the debt of the said Railroad Company to the State in the same position and with the same rights which the said State of Tennessee had previous to and before the said payment, and with full power to enforce the same, and on or about the twenty-fifth day of July, eighteen hundred and seventy-seven, certified copies of the resolutions of the Board of Directors of the said Railroad Company under its corporate seal, 282
were duly filed with the Treasurer of said State of Tennessee, copies of which resolutions and of which instrument so executed by said railroad company under and in pursuance thereof, under said Company's corporate seal, are as follows, that is to say: In the copy of the instrument hereinafter executed by said Company under its seals, the signatures and seals do not appear, but the same were duly affixed thereto, the instrument so executed being in the form and to the effect set forth in the said resolution 283
authorizing the same.

I, Marshall T. Polk, Treasurer of the State of Tennessee, do hereby certify that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, have this day, in pursuance of the sixth and seventh sections of the Act of the Legislature of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed Feb- 284
ruary 25th, 1869, filed in my office certified copies of certain resolutions of the Board of Directors of the Memphis and Charleston Railroad Company, and a certain written consent and agreement of said Memphis and Charleston Railroad Company under its corporate seal, duplicate copies of which resolutions and consent and agreement are hereunto annexed.

285 Given under my hand and official seal this twenty-fifth day of July, eighteen hundred and seventy-seven.

MARSHALL T. POLK, *Treasurer.*

At a meeting of the Board of Directors of the Memphis and Charleston Railroad Company, held in the City of Memphis, on the thirty-first day of May, eighteen hundred and seventy-seven,

286 Present—R. T. Wilson, President; C. M. McGhee, Vice-President; Messrs. J. R. Mosby, Jerome Hill, W. S. Hastie, Napoleon Hill, W. W. Garth, J. D. Rather and George P. Bierne. Upon motion of Mr. Napoleon Hill, duly seconded, it was resolved, all the members of the Board present voting in favor thereof, except George P. Bierne, as stated in the three resolutions next following, viz.:

287 *Resolved*, That this board hereby gives its consent and approbation, and that of the company, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, may, so far as the State of Tennessee is concerned, pay this company's indebtedness to the State of Tennessee for or in respect of the Tennessee State bonds heretofore loaned or delivered to or in aid of this company, and for which the State has a lien in Tennessee State bonds or coupons thereof, as
288 provided for by the Act of the Legislature of Tennessee in that behalf, approved February 25th, 1869, and the Acts amendatory thereof, or supplementary thereto, and that by such payment said A. Iselin & Company shall acquire and be entitled to the rights, liens and securities in that behalf, provided for by the sixth and seventh sections respectively of the said Act of February 25th, 1869.

Resolved, That the President and Secretary of 289
this company be and are hereby authorized and directed to execute, under this company's corporate seal, and with their signatures as such President and Secretary, an instrument substantially of the form and effect following, in duplicate, and deliver the same to said A. Iselin & Co., one copy thereof being intended to be filed with the State Treasurer of Tennessee, as follows, that is to say:

KNOW ALL MEN BY THESE PRESENTS, that where- 290
as the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said railroad company under the general internal improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds a lien upon said company's railroad in the State of Tennessee, and other property of said company, 291
as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued or delivered to or in aid of said railroad company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds; which during a certain period the said railroad coupons failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding inter- 292
est, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the Railroad Company to the State about fif-

293 teen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

NOW, THIS INSTRUMENT which is executed by the said the Memphis and Charleston Railroad Company, under its corporate seal, in pursuance of a
294 resolution of the Board of Directors of said railroad company specially authorizing the same; duly passed at a meeting of said Board duly held on the thirty-first day of May instant,

WITNESSETH that the said the Memphis and Charleston Railroad Company, and the Board of Directors of said company, respectively have given and do give its and their consent and approbation, under and in pursuance of the Act of the Legisla-
295 ture of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis
296 and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that hereinbefore referred to; and that such payment of such indebtness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of

Tennesssee, or coupons of such bonds, at par, as allowed by the laws of said State in that behalf; and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, to be substituted and entitled to all the liens against said railroad company, and against its property, for the payment of such indebtness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness, may receive from the Governor and Secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above mentioned Legislative Act of the twenty-fifth day of February, eighteen hundred and sixty-nine. And under and in pursuance of the seventh section of the Act last above mentioned, the said the Memphis and Charleston Railroad Company, and the Board of Directors of said company, do hereby further respectively assent and agree that said Adrian Iselin and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company, to the State of Tennessee, so far as said State is concerned, in the bonds or coupons of said State as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the railroad of said Memphis and Charleston Railroad Company, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being or hereby declared), in accordance with the seventh section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such in-

301 debtedness, with the consent of said railroad company, in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

IN WITNESS WHEREOF the said the Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors as aforesaid, hath hereunto affixed its corporate seal, and caused
302 these presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven. And this Board hereby agrees and gives its consent and approbation to everything stated or contained in the instrument above directed to be executed and delivered to said A. Iselin & Co.

Resolved, That the secretary be directed to furnish to A. Iselin & Co., in duplicate, copies certified
303 by him of these resolutions.

I HEREBY CERTIFY that the foregoing is a true copy from the minutes of a meeting of the Board of Directors of the Memphis and Charleston Railroad Company, held in the city of Memphis, Tennessee, on the thirty-first day of May, eighteen hundred and seventy.

S. R. CRUSE,

Secretary and Treasurer of the Memphis
304 (Seal.) *and Charleston Railroad Co.*

KNOW ALL MEN BY THESE PRESENTS, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect to the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said railroad company under the General

Internal Improvement Laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds a lien upon said company's railroad in the State of Tennessee, and other property of said company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued or delivered in aid of said railroad company and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said railroad company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and given credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the railroad company to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

NOW, THIS INSTRUMENT, which is executed by the said The Memphis and Charleston Railroad Company under its corporate seal; in pursuance of a resolution of the Board of Directors of said railroad company, specially authorizing the same, duly passed at a meeting of the said board, duly held on the 31st day of May, instant.

WITNESSETH, That the said The Memphis and Charleston Railroad Company, and the Board of Directors of said company respectively, have given,

and do give its and their consent and approbation, under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the Acts of such Legislature in amendment thereof, or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Compay, of the the city of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State, which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that herein before referred to, and that such payment of said indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee or coupons of such bonds at par, as allowed by the laws of said State in that behalf, and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, and upon so paying such indebtedness be substituted and entitled to all the liens against said railroad company and against its property for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness may receive from the Governor and Secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above-mentioned Legislative Act of February 25th, 1869.

And under and in pursuance of the seventh section of the Act last above-mentioned the said The Memphis and Charleston Railroad Company, and the Board of Directors of said Company, do hereby further respectively assent and agree that

said Adrian Iselin and Adrian Iselin, Junior, upon 313
so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as the said State is concerned, in the bonds or coupons of said State, as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said Company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the Railroad of said Memphis and Charleston Railroad Company or its 314
p operty, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being so hereby declared) in accordance with the seventh section of the said Act of February 25th, 1869, to place said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said Railroad Company, in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to en- 315
force the same.

In witness whereof, the said The Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors, as aforesaid, have hereunto affixed its corporate seal and caused these presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven.

316

The Memphis and Charleston Railroad Co.,
By R. T. WILSON,
President

The Memphis and Charleston Railroad Co.,
[L. S.] By S. R. CRUSE,
Secretary and Treasurer.

317 STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me Hudson Cary, Notary Public in and for said county, duly commissioned and qualified, S. R. Cruse, Secretary and Treasurer of the Memphis and Charleston Railroad Company, who is personally known to me both in his person and as such Secretary and Treasurer, who, being duly sworn, deposes and says and acknowledges that he executed the foregoing instru-
318 ment, being acquainted with its contents, for the purposes therein stated, in the interest and on the behalf of the Memphis and Charleston Railroad Company, and under authority granted him by resolution of the Board of Directors of said Company, passed at a meeting of said Board of Directors on the thirty-first day of May, eighteen hundred and seventy-seven.

Witness my hand and notarial seal this
319 June ninth, A. D. eighteen hundred and seventy-seven.

HUDSON CARY,
Notary Public.

AND WHEREAS, thereupon, the said Adrian Iselin and Adrian Iselin, Junior, with such consent and approbation of the said Railroad Company and of its Board of Directors, and in the manner and with
320 the effect so consented to, and under and in pursuance of, and in accordance with, the said sixth and seventh sections of the aforesaid Acts of February 25th, 1869, and the other laws of the said State of Tennessee in that behalf, paid to the said State of Tennessee, in the bonds of said State and coupons of such bonds at par, as allowed by law, the amount of the aforesaid indebtedness of the

said The Memphis and Charleston Railroad Company to the said State of Tennessee for or in respect of the amount of the bonds of the State of Tennessee, which, under the General Improvement law, passed February 11, 1852, and the other Acts of the Legislature of that State, were originally loaned, issued or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds, issued to fund or provide for certain interest upon these bonds before mentioned, which, during a certain period, the said railroad company failed to provide for the aggregate amount of principal of said State bonds, including those so issued for funding interest, after deducting and giving credit for the amount theretofore paid on account by the said railroad company to the sinking fund, being one million six hundred and seventy-one thousand nine hundred and sixteen dollars twenty-five cents ($1,671,916.25), and there being also due by said railroad company to the State for interest accrued thereon, up to the first day of July, eighteen hundred and seventy-seven, the sum of sixty-four thousand nine hundred and ninety dollars ($64,990), making the whole amount of such indebtedness of said railroad company to the said State of Tennessee, and for which the said State held a lien as aforesaid, the sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25) as of the first day of July, eighteen hundred and seventy-seven, and so much whereof as was principal bore interest from that date at the rate of six per cent. per annum, whereupon the said Adrian Iselin and Adrian Iselin, Junior, under and in pursuance of, and in accordance with, the statutes of the said State of Tennessee in that behalf became assignees of the said indebtedness of one million seven hundred and

thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), owing from the said The Memphis and Charleston Railroad Company to the said State of Tennessee, with the interest thereon accrued and to accrue from and after the first day of July, eighteen hundred and seventy-seven, and became substituted and entitled to all the liens against said Railroad Company for the payment of said debt that the said State of Tennessee had by law and became entitled, as provided by the seventh section of the Act aforesaid, to have and to hold all the lien or liens which the said State of Tennessee had upon the said railroad or its property, and the same right to enforce the same which the said State of Tennessee had, and the said Adrian Iselin and Adrian Iselin, Junior, under and in pursuance of the said seventh section of the Act aforesaid, were thereupon placed in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same; and thereupon the said Adrian Iselin and Adrian Iselin, Junior, received from the Governor and the Secretary of State of the the State of Tennessee their certificate in writing, as provided for by the said sixth and seventh sections of the Act aforesaid, a copy of which said certificate is as follows—that is to say:

We, James D. Porter, Governor of the State of Tennessee, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, have this day filed with the Treasurer of the State of Tennessee the written consent of the Board of Directors of the Memphis and Charleston Railroad Company, and likewise the written assent and approbation of the said The Memphis and Charleston

Railroad Company, under the corporate seal of the said Railroad Company, that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., may, under and in pursuance of the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, pay, so far as the State of Tennessee is concerned, in bonds of the State of Tennessee, or coupons of such bonds, at par, as by law of the State of Tennessee is authorized, the amount of the indebtedness hereinafter mentioned of the said Memphis and Charleston Railroad Company to the State of Tennessee; and that said Adrian Iselin and Adrian Iselin, Junior, composing the firm aforesaid, shall thereby and thereupon, as provided by the sixth section of said Act, be substituted and entitled to all the liens against said Company for the payment of said debt that the State of Tennessee had or has by law, and shall thereby and thereupon, as provided by the seventh section of said Act, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being thereby declared to be to place the said Adrian Iselin and Adrian Iselin, Junior, so paying, with the consent of said Railroad Company, in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

AND WE DO FURTHER CERTIFY that the said

333 Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have thereupon, with the consent and approbation of the said Railroad Company, and of the Board of Directors thereof, and under and in pursuance of and in accordance with the said sixth and seventh sections of the aforesaid Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other laws of the State of Tennessee, in that behalf paid to to the State of Tennessee, in the bonds of said
334 State, and coupons of such bonds, at par, as allowed by law, the amount of indebtedness of the said The Memphis and Charleston Railroad Company to the State of Tennessee, and for which the State of Tennessee holds a lien by law upon said company's railroad in the State of Tennessee, and other property, which indebtedness is for or in respect of the amount of the bonds of the State of Tennessee which under the general improvement law passed the eleventh day of February, eighteen hundred and fifty-
335 two, and the other Acts of the Legislature of said State, were originally loaned, issued, or delivered to or in aid of said company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said railroad company failed to provide, the aggregate amount of the principal of such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the
336 railroad company to the sinking fund being sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents ; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July, instant, upon the beforementioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and

twenty-five cents, making the whole amount of 337
such indebtedness of said railroad company to the
State of Tennessee, and for which the State holds a
lien as aforesaid, the aggregate sum of seventeen
hundred and thirty-six thousand nine hundred and
thirty-six dollars and twenty-five cents; exclusive
of interest accrued since the first day of July,
instant, which aggregate sum or amount, together
with the interest accrued thereon since the first day
of July, instant, the said Adrian Iselin and Adrian
Iselin, Junior, composing the firm of A. Iselin & 338
Co., have this day, in the manner and under the
circumstances aforesaid, paid to the State of Ten-
nessee, in Tennessee State bonds and coupons at
par, as allowed by the laws of said State; and we
do further certify and declare that thereupon, and
under and in pursuance of the sixth and seventh
sections of the said act of the twenty-fifth day of
February, eighteen hundred and sixty-nine, and the
other Acts of the Legislature of the State of Tennes-
see in that behalf, the said Adrian Iselin and Adrian 339
Iselin, Junior, composing the firm of A. Iselin & Co.,
have become and are the purchasers and assignees
of the above-mentioned indebtedness of the Mem-
phis and Charleston Railroad Company to the State
of Tennessee, with all the liens held by the said
State therefor, and with all the rights in that behalf
accorded or authorized by the said sixth and sev-
enth sections respectively of said act of the twenty-
fifth day of February, eighteen hundred and sixty-
nine, and the same are declared to be and are hereby 340
assigned and transferred to them accordingly; and
under and in accordance with the sixth section of
the said act of the twenty-fifth day of February,
eighteen hnndred and sixty nine, it is hereby de-
clared that the said Adrian Iselin and Adrian Iselin,
Junior, are substituted and entitled to all the liens
against said railroad company for the payment of said

indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and to hold all the lien or liens which the State of Tennessee had or has upon said Memphis and Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had; the object and intent being, and being hereby declared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

IN WITNESS WHEREOF we have hereunto set our hands and official seals this twenty-fifth day of July, eighteen hundred and seventy-seven.

(Signed) JAS. D. PORTER,
Governor of Tennessee.

(Seal of State of Tennessee.) CHAS. N. GIBBS,
Secretary of State.

AND WHEREAS, by means of the premises aforesaid, the said Adrian Iselin and Adrian Iselin, Junior, are now the lawful owners and holders of the aforesaid indebtedness of the Memphis and Charleston Railroad Company, existing originally in favor of the said State of Tennessee, and amounting to the said sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven; and

the said Railroad Company is indebted to the said 345
Adrian Iselin and Adrian Iselin, Junior, as assignees of the State as aforesaid, in that amount and with such interest, and the said Adrian Iselin and Adrian Iselin, Junior, are also now the holders, by assignment, as aforesaid, of the above-mentioned statutory lien, in the nature of a mortgage originally existing in favor of the said State of Tennessee for the amount of the indebtedness, aforesaid, and of all the rights, liens, and securities which the said State of Tennessee had for or in re- 346
spect of said indebtedness, and the interest accrued and to accrue thereon, and are and will be entitled to the like rights and remedies for the enforcement of such liens, and for the securing and collecting of such indebtedness and interest thereon, as the State of Tennessee held or would have possessed and been entitled to if its said transfer to the said Adrian Iselin and Adrian Iselin, Junior had not been made.

347

Now this Indenture Witnesseth, that the said The Memphis and Charleston Railroad Company, in consideration of one dollar to it in hand paid by the said Adrian Iselin and Adrian Iselin, Junior, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and in consideration of the premises, and for other good and valuable considerations it thereunto moving, the receipt whereof is also hereby acknowledged, and in conformity with a provision in 348
that behalf contained in the consolidated mortgage hereinafter mentioned, doth hereby recognize, ratify and confirm the holding and ownership by the said Adrian Iselin and Adrian Iselin, Junior, under transfer from the State of Tennessee, as aforesaid, of the aforesaid indebtedness of said Railroad Company originally existing in favor of the State of

six thousand nine hundred and six dollars and twenty-five cents, and for the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, fourteen certain consolidated first mortgage bonds of the said The Memphis and Charleston Railroad Company, bearing date August twentieth, eighteen hundred and seventy-seven, each for the payment of the sum of one thousand dollars in United States gold coin, on the first day of January, nineteen hundred and fifteen, with interest thereon in the meantime at the rate of seven per cent. per annum, payable in like gold coin semi-annually, on the first days of January and July in each year, issued under and secured by the said railroad company's so-called consolidated mortgage or deed of trust, bearing date August twentieth, eighteen hundred and seventy-seven, to the said Farmers' Loan and Trust Company as trustee, made to secure an issue of consolidated bonds thereunder limited to the aggregate amount of four million seven hundred thousand dollars, which fourteen hundred bonds, so transferred and delivered to the said Adrian Iselin and Adrian Iselin, Junior, and numbered consecutively from (1) to fourteen hundred (1,400) both inclusive. *And* it is hereby expressly declared and agreed by and between the said The Memphis and Charleston Railroad Company and the said Adrian Iselin and Adrian Iselin, Junior, that such transfer and delivery to said Adrian Iselin and Adrian Iselin, Junior, of the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, is not in anywise to operate as a payment of, or upon account of, the aforesaid indebtedness of the said Railroad Company to the said Adrian Iselin and Adrian Iselin, Junior, as assignees of the rights of the said State of Tennessee, as aforesaid, amounting to the above-mentioned sum of one million seven hundred

and thirty-six thousand, nine hundred and six dol- 361
lars and twenty-five cents, with interest as aforesaid ;
nor shall such transfer and delivery of such fourteen
hundred bonds in any wise diminish, impair, nor
affect the prior and paramount lien for the amount
of such indebtedness and interest on the portion
of said railroad, situated in the said State of Ten-
nessee, with its appurtenances and equipments, and
the other property in that State which originally
existed in favor of the State of Tennessee, and
which is now held by said Adrian Iselin and Adrian 362
Iselin, Junior, under transfer from said State as
aforesaid ; but, that notwithstanding such transfer
and delivery to said Adrian Iselin and Adrian Iselin,
Junior, of such fourteen hundred bonds, the said
debt against said Railroad Company now held by
them under transfer from said State of Tennessee,
and the lien therefor originally existing in favor of
said State, and vested in them by transfer as afore-
said, and all the rights and securities and remedies
of the said Adrian Iselin and Adrian Iselin, Junior, 363
for the security of said indebtedness originally ex-
isting in favor of said State, with the interest thereon
accrued and to accrue, or for the enforcement of the
lien therefor, are to and shall remain in full force
and effect, as if said fourteen hundred bonds had
not been transferred and delivered as additional
security therefor, as aforesaid, PROVIDED HOWEVER,
and it is hereby agreed, that all sums which shall
have been actually paid in cash by said Railroad
Company, on account of interest or principal upon 364
said fourteen hundred bonds, or any of them, either
to said Adrian Iselin and Adrian Iselin, Junior, or
to any one holding any of such bonds by or under
transfer by them are when such payments respec-
tively are actually made and realized in cash, and
not before, to be credited as payments on account
of said original indebtedness to the State of Ten-

nessee, assigned to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, reckoning for the purpose of such credits such payments made in gold at the value thereof in United States legal tender currency at the time of payment, which payments received for interest on such fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be credited on account of the interest accruing subsequently to July first, eighteen hundred and seventy-seven, on said indebtedness originally existing in favor of the State, and assigned to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and which payments, if any, received for or on account of principal of such fourteen hundred bonds shall be applied on account of the principal of such indebtedness originally existing in favor of the State, and by it assigned over as aforesaid, and the interest thereon accrued up to July first, eighteen hundred and seventy-seven.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED AND EXPRESSLY AGREED by and on the part of the said Memphis and Charleston Railroad Company that the said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to sell or otherwise dispose of or transfer any or all of the said fourteen hundred bonds so transferred to them as they may deem fit, without thereby prejudicing or affecting the said original indebtedness to the State so assigned to them, or the said lien held therefor, or the rights or remedies of themselves or their assigns for or in respect of the same, and without subjecting themselves or their assigns to any present credit upon such indebtedness for or in respect of said bonds so sold or disposed of or transferred, but subject to the aforesaid obligation to give credit upon such original indebtedness for all payments made for principal or interest on

such bonds so sold or disposed of or transferred, 369
when such payments are actually made and realized in cash, but not before.

AND WHEREAS the said Adrian Iselin and Adrian Iselin, Junior, contemplate, in pursuance of the foregoing authorization and agreement in that behalf, or sell or dispose of or transfer the whole or portions, from time to time, of the said fourteen hundred consolidated first mortgage bonds for one thousand dollars each, now received by them 370
by way of additional collateral security for the said indebtedness as aforesaid, and to accompany such sale or disposal, or transfer of such bonds by transfer, to the holders or takers thereof respectively of beneficial interests in and to a trustee for their benefit of the legal title to a proportionate part of said original indebtedness of the said Railroad Company to the State of Tennessee, and of the liens and securities therefor, originally held by the State, and now vested by transfer in them as aforesaid. 371

NOW, THIS INDENTURE FURTHER WITNESSETH that the said Adrian Iselin and Adrian Iselin, Junior, in consideration of the premises, and to the end aforesaid, and in further consideration of one dollar to them in hand paid by the party of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and with the consent and approval of the said The Memphis and Charleston Railroad Company, hereby given and attested by the ensealing 372
and delivery of these presents by the said Railroad Company, have assigned, transferred and set over, and do hereby assign, transfer and set over to the said The Farmers' Loan and Trust Company, party of the second part hereto, as trustee hereunder, and its successors and assigns, the aforesaid indebtedness of the said The Memphis and Charleston Rail-

road Company, originally existing in favor of the State of Tennessee, and now vested in the said Adrian Iselin and Adrian Iselin, Junior, by transfer from said State as aforesaid, amounting to the before-mentioned sum of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), with the interest accrued and to accrue thereon from and after the first day of July, eighteen hundred and seventy-seven, and likewise the aforesaid statutory lien, in nature of a mortgage, for the security of such indebtedness heretofore held by the State of Tennessee, and now vested by assignment in said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and all the liens, securities, rights and remedies whatsoever, for the security and collection of such indebtedness and the interest thereon accrued and to accrue, which the said Adrian Iselin and Adrian Iselin, Junior, now are vested with or entitled to, or at any time or times hereafter, but for the execution and delivery of this instrument, would or might be entitled to have, hold or exercise, *to be had and holden* by the said The Farmers' Loan and Trust Company as trustee, under this indenture, for the equal *pro rata* security and benefit of all such persons and corporations, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, as from time to time shall be the holders of the before-mentioned fourteen hundred consolidated first mortgage bonds, numbered one to fourteen hundred inclusive, and so as that beneficial or equitable interest in the said indebtedness originally existing in favor of the State, including the interest thereon accrued and to accrue, and in the lien which was held by the State therefor, and in the rights and remedies in respect thereof, may (as it is hereby declared and agreed by the parties of the first and third part respectively shall be the case) vest equit-

ably in the holders from time to time of such four- 377
teen hundred collateral bonds, numbered one to fourteen hundred inclusive, including the said Adrian Iselin and Adrian Iselin, Junior, themselves, in respect of so many of said fourteen hundred bonds as may remain in their hands untransferred by them, with *pro rata* equality in proportion to the respective amounts of such fourteen hundred bonds held by such parties respectively. And so that the holder of each of such fourteen hundred bonds numbers one to fourteen hundred inclusive, shall 378
be entitled to a proportionate beneficial interest in such amount or proportion of the said indebtedness originally existing in favor of the State, with the interest there accrued and to accrue, and the said lien and rights held for the security thereof, corresponding with the principal and interest of such bond so held by him, and with the proper proportionate addition thereto, by reason of the principal and interest of such bond being payable in gold instead of currency; but the legal title to such 379
original indebtedness, with its attendant liens and securities remaining, nevertheless, vested in the said party of the second part hereto in trust for the holders of said fourteen hundred collateral bonds as aforesaid, and to the end and intent that, notwithstanding any sale or disposition or transfer which may be made by said Adrian Iselin and Adrian Iselin, Junior, of such fourteen hundred collateral bonds, numbered one to fourteen hundred inclusive, the said debt and lien originally existing in favor of 380
the State, and preserved in full force, and assigned and transferred to the said The Farmers' Loan and Trust Company, as trustee hereunder as aforesaid, and the said bonds held as further collateral security therefor may, in substance and effect, be beneficially held by or for the account and benefit of the same persons, and that the parties may sub-

381 stantially, in respect of beneficial or equitable interests, be in like position as if the said original debt and lien and the said fourteen hundred bonds, held as collateral security therefor, had all continued to be held by said Adrian Iselin and Adrian Iselin, Junior, or had been altogether assigned over by them to the same person or persons.

AND IT IS HEREBY FURTHER PROVIDED AND DECLARED, that the party of the second part hereto,
382 as trustee as aforesaid, shall endorse upon said fourteen hundred consolidated bonds, numbers 1 (one) to 1400 (fourteen hundred) inclusive, a certificate subscribed on behalf of the said party of the second part by its President, which shall be substantially in the following form, viz:

"It is hereby certified that Adrian Iselin and Adrian Iselin, Junior, as assignees from the State of Tennessee of a debt originally due by the Memphis and Charleston Railroad Company to the State of
383 Tennessee, amounting as stated, including interest to the first day of July, eighteen hundred and seventy-seven, to seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, and of the State's prior lien therefor upon said Company's railroad line in Tennessee and other property in that State, have, with said Railroad Company's consent, executed and delivered an instrument dated the twenty-first day of August, eighteen hundred and seventy-seven, assigning said
384 original debt and lien to The Farmers' Loan and Trust Company as trustee, as an additional and special security for the fourteen hundred consolidated bonds of this issue, numbers one to fourteen hundred inclusive, whereof this is one, reference to which instrument is hereby made for showing the securities and rights acquired thereunder by the holders of said fourteen hundred bonds.

"Dated the twenty-first day of August, eighteen 385
hundred and seventy-seven.

"THE FARMERS' LOAN AND TRUST COMPANY,
"By R. G. ROLSTON, *President.*"

And the said parties of the first part, with the consent of the said parties of the third part, do hereby covenant, declare and agree to and with the party of the second part, as trustee for the benefit of the holders from time to time of said fourteen hundred 386
bonds, numbers one to fourteen hundred inclusive, and likewise to and with all such persons as shall from time to time become transferees or holders of any of such fourteen hundred bonds, having endorsed thereon such certificate substantially in the form to the effect aforesaid, that all such holders from time to time of any of such fourteen hundred bonds having such certificate endorsed thereon shall be possessed of and entitled to such proportional beneficial or equitable interest as is hereinbefore 387
declared or provided for in the said debt originally due from the Memphis and Charleston Railroad Company to the State of Tennessee, and the interest accrued or to accrue thereon, and in the said lien originally held by the State therefor, and in the rights, liens and securities in respect thereof transferred by the State to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and hereby vested in the party of the second part as trustee as aforesaid, as likewise to all others their equitable rights as 388
beneficiaries of the trust created by this indenture.

AND inasmuch as under the terms and conditions of this instrument, and under and in virtue of the terms and conditions of the mortgage or deed of trust securing the issue of consolidated first mortgage bonds whereof said fourteen hundred bonds from one to fourteen hundred inclusive form part,

as by reference to that mortgage or deed of trust will appear, there will exist a double lien and security for substantially the same amount or debt in favor of the holders of said debt and lien originally held by the said State of Tennessee, and assigned over to Adrian Iselin and Adrian Iselin, Junior, as aforesaid, and now transferred to the party of the second part in trust as aforesaid, and of the holders of the said fourteen hundred bonds numbered from one to fourteen hundred inclusive, held as further collateral security therefor, and which double lien, as to a part thereof, will exist upon the same subject matter, namely, the said railroad in Tennessee, with its appurtenances and equipments, and the other property in that State subject to the State lien, although, as to other portions of the property covered by the said consolidated mortgage, situate in the States of Alabama and Mississippi respectively, the said State lien now vested in Adrian Iselin and Adrian Iselin, Junior, as aforesaid, has no application or operation. Now, it is hereby declared, provided, granted and agreed by and between all the parties hereto, in conformity with the provisions and declarations in that behalf contained in the said consolidated mortgage securing the issue of bonds, whereof the said fourteen hundred bonds numbered from one to fourteen hundred inclusive form part, that such double lien and security is intended to and shall exist, and that neither of such liens or securities shall prejudice the efficacy of the other; and that the State lien held by assignment as aforesaid, and now vested in the said The Farmers' Loan and Trust Company as trustee under this indenture, and for the uses and purposes thereof may be enforced, and all the rights and remedies in respect thereof may be held and had as fully and completely and effectually as if the lien and security in virtue of the holding of such fourteen hundred

bonds as further collateral security as aforesaid did 393
not exist, and that the holders from time to time of
such fourteen hundred bonds so transferred by way
of further collateral security for such original debt
shall be entitled, as fully and completely and effec-
tually as if the said original lien and security for
the original debt, as further security for which said
fourteen hundred bonds are transferred, did not
exist, to their equal *pro rata* share and proportion
in like manner with the holders of other bonds,
numbers 1401 (fourteen hundred and one) to 4,700 394
(four thousand seven hundred) inclusive, to be
issued under and secured by the said consolidated
mortgage, or such of said other bonds as may from
time to time be outstanding, of the benefit of all the
securities and liens provided by the said consolidat-
ed mortgage, and of the proceeds and fruits thereof,
and of any foreclosure or enforcement of the same,
including as well the mortgaged premises (situate in
Alabama and Mississippi) as the other mortgaged
premises, save and except that if, prior to making 395
apportionment and distribution between the holders
of the bonds secured by the said consolidated mort-
gage of the net proceeds of any foreclosure, or other
legal enforcement thereof, any net sum shall have
been actually collected and realized in cash by
means of legal enforcement of the said lien origin-
ally held by the State of Tennessee and assigned
over to Adrian Iselin and Adrian Iselin, Junior, as
aforesaid, and now vested in the said The Farmers'
Loan and Trust Company, as trustee under this in- 396
denture, by giving proper credit wherefor, after first
deducting therefrom all proper expenses and
charges incurred in respect of the proceedings for
such enforcement and collection, including the com-
pensation of the said party of the second part as
trustee in respect thereof, the then unpaid amount
of said indebtedness of the Railroad Company

originally existing in favor of the State, and by it transferred over as aforesaid, and as collateral security for which said fourteen hundred bonds, numbers one to fourteen hundred inclusive, shall be reduced below the principal of such fourteen hundred bonds, and the interest thereon accrued and unpaid at the time of such apportionment and distribution, having due regard to the circumstance that said bonds are payable in gold, and therefore reducing the amount of such net credit or deduction realized in legal tender currency to the value thereof in gold when collected and realized, then and in such case, for the purpose of making such apportionment and distribution between the respective bondholders secured under said consolidated mortgage of the net proceeds of such foreclosure or other legal enforcement of said consolidated mortgage, the said fourteen hundred bonds, numbers one to fourteen hundred inclusive, instead of being reckoned at their face value, with their accrued and unpaid interest, shall be reckoned as being only for an amount equal to such reduced amount, computed as aforesaid, remaining unpaid at the time of such apportionment and distribution upon the said indebtedness of said railroad company originally existing in favor of the State of Tennessee, and by it transferred over as aforesaid, and for which the said fourteen hundred bonds shall stand as security as aforesaid, and such apportionment and distribution between such fourteen hundred bonds and the other outstanding bonds secured by the said consolidated mortgage shall be made accordingly, and it being always understood and hereby agreed and provided, that the double lien and security aforesaid will not and shall not be allowed so to operate as to produce an actual double payment or satisfaction, but that all payments actually received and realized in money by means of

either security will and shall, to the extent of such 401
actual payments realized, go in reduction of such original debt and of said collateral bonds held as security therefor, but making the proper allowance for difference between gold and currency as aforesaid.

AND, in consideration of the addition collateral security now given to them as aforesaid, and as part of the bargain and arrangement between the said Adrian Iselin and Adrian Iselin, Junior, and the 402
Memphis and Charleston Railroad Company, in respect of the premises which is evidenced by this Indenture, the said Adrian Iselin and Adrian Iselin, Junior, do hereby consent and agree to and with the said, the Memphis and Charleston Railroad Company, that they will eventually reduce the amount of their said claims and demands against said railroad company, and the lien and security therefor under the said assignment and transfer from the State of Tennessee to them, so that when 403
they or their assigns shall have actually received and realized in cash by net payments, as on account of the said present amount of the said indebtedness of one million seven hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), in United States legal tender currency, due July first, eighteen hundred and seventy-seven, a sum equal to fourteen hundred thousand dollars ($1,400,000) in United States gold coin, reducing currency realizations or pay- 404
ments to gold values as elsewhere provided, and when they or their assigns shall have actually received and realized in cash by net payments, on account of interest accruing at the rate of six per cent. per annum, payable semi-annually on the first days of January and July, upon the said currency indebtedness of one million seven hundred

405 and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25) a sum equal to seven per cent. per annum in United States gold coin, from the first day of July, eighteen hundred and seventy-seven, payable semi-annually on the first days of January and July, upon such sum of fourteen hundred thousand dollars ($1,400,000) gold, until payment and realization in cash as aforesaid of that principal sum, reducing currency realizations or payments to gold values as
406 elsewhere provided, the residue of such currency indebtedness of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents ($1,736,906.25), and of the interest accruing thereon, from and after July first, eighteen hundred and seventy-seven, shall be thereupon given up, released and discharged to said railroad company.

PROVIDED HOWEVER, and it is understood as a
407 condition thereof, that the said the Memphis and Charleston Railroad Company shall, as they hereby agree they will, bear, pay, and discharge all the expenses and charges attendant upon the collection and receipt of such moneys on account of the principal and interest (or either) of such indebteduess originally existing in favor of the State, and of all legal and other proceedings had or taken for the recovery thereof, including the compensation of the party of the
408 second part, as Trustee, in respect of such collection, receipt, and legal and other procoedings.

AND IT IS AGREED that this stipulation on the part of said Adrian Iselin and Adrian Iselin, Junior, shall bind their representatives and assigns, including the said The Farmers' Loan & Trust Company, as assignee of such debt in trust for the purpose of this Indenture, whereunto the said The Farmers'

Loan and Trust Company, as such Trustee, does 409
hereby assent.

IT IS FURTHER UNDERSTOOD AND AGREED, that for the purpose of this stipulation and agreement all cash payments received and realized, for principal or interest, upon such fourteen hundred bonds, numbered from one to fourteen hundred inclusive, or any of them, by parties holding such bonds, by or under transfer from said Adrian Iselin and Adrian Iselin, Junior, shall be of like legal 410
effect as if the said moneys were received by said Adrian Iselin and Adrian Iselin, Junior, themselves.

AND IT IS HEREBY FURTHER PROVIDED, DECLARED, GRANTED AND AGREED that all net sums or amounts which shall be received or in anywise realized by the said The Farmers' Loan and Trust Company, as Trustees under this Indenture, for or in respect of, or from or by reason of the indebtedness of the Memphis and Charleston Railroad Com- 411
pany, originally existing in favor of the said State of Tennessee, and hereby assigned to the Farmers' Loan and Trust Company as Trustees as aforesaid, or by means of enforcement in any form of the said statutory lien in the nature of a mortgage or of any other liens or securities for such indebtedness held by the said The Farmers' Loan and Trust Company as Trustees under this Indenture, shall, after first deducting therefrom all proper expenses and charges in the premises, including the compensation of the 412
Trustee in respect thereof, be divided with *pro rata* equality among all and singular the holders of the said fourteen hundred bonds issued under and secured by the said consolidated mortgage, and numbered from one to fourteen hundred inclusive, in proportion to the amounts of principal and interest due or owing at the time being upon such

fourteen hundred bonds; and it being understood and agreed that the said Adrian Iselin and Adrian Iselin, Junior, shall be entitled to participate therein for or in respect of such of the said fourteen hundred bonds as they may retain in their own hands unsold or undisposed of in like manner as holders of any of such bonds under the transfer thereof from them; and it being further understood that the holders of such fourteen hundred bonds are not to receive in the whole a greater sum than the amounts in gold of the principal and interest of their bonds, reducing the currency realizations or credits or payments to the gold values thereof at the time of realization or payment as aforesaid.

And the said Adrian Iselin and Adrian Iselin, Junior, with the assent and concurrence of the said The Memphis and Charleston Railroad Company, which is hereby given, do hereby authorize and empower the said The Farmers' Loan and Trust Company as Trustee as aforesaid in any and every case of the occurrence of such default on the part of said railroad company or of the existence otherwise of such circumstances as to authorize any proceedings either at law or in equity, or by entry into possession and receipt of income or otherwise howsoever, for the enforcement of the lien which was originally held by the State of Tennessee for security of the aforesaid indebtedness of the said railroad company to the State, and which was transferred and assigned by the State to said Adrian Iselin and Adrian Iselin, Junior, as aforesaid, or for the collecting or securing of such indebtedness and the interest thereon accrued or to accrue, or either such principal or interest or any part thereof, to take any and all such proceedings either at law or in equity, or by entry into possession and receipt of income or otherwise howsoever, for any and all of the purposes and ends

aforesaid, either in the name and as the attorneys 417
of the said Adrian Iselin and Adrian Iselin, Junior, or otherwise as may be deemed expedient, and to do all acts and things needful or proper to such ends.

AND IT IS HEREBY PROVIDED, DECLARED AND AGREED that the said the Farmers' Loan and Trust Company, in case it shall be called upon to take any legal or other steps or proceedings for the enforcement of the lien of for collection of the said 418
indebtedness hereby assigned to it, shall be entitled to receive just and proper compensation for all the services it shall render in and about such steps or proceedings, as well as for any other services it may properly render in the performance of its duties as such Trustee, as also indemnity for its proper disbursement in the premises, which compensation and indemnity shall be borne and paid by the said Railroad Company, and if not so paid by the said Railroad Company directly may be deducted from the 419
sums collected or received by it as such Trustee, in the accounting for such moneys and application thereof to the purposes of this trust. The Trustee, however, shall not be compelled to commence such foreclosure proceedings until the parties requesting the same shall have furnished the said Trustee with satisfactory indemnity for all costs and charges.

AND IT IS FURTHER PROVIDED, DECLARED AND AGREED that in case of a vacancy at any time occurring in the Trusteeship of the party of the 420
second part hereunder or its successor or successors, either by resignation duly accepted by a majority in amount of said bondholders who are beneficiaries of the trust, removal, death or otherwise howsoever, such vacancy may be filled by the concurrent action in writing under seal of a majority in amount of the holders of said fourteen hundred bonds, numbers

provided further, that in case of the sale and release as aforesaid of any of such lands in Memphis so disused, if any other lands shall be procured by said railroad company to be used in place thereof, or substitution therefor, for depot grounds or sites for buildings, or other purposes of such railroad, or its operating, such substituted lands shall be subject to the like lien in favor of the said party of the second part, or its successors or successor, as trustee hereunder, as were such released lands. And the said railroad company shall, by proper deed or instrument, confirm and assure, and, if need be, execute such lien upon such substituted lands, and upon all buildings and other improvements placed thereon, to and in favor of the said party of the second part, as trustee hereunder, or its successor or successors.

And inasmuch as the party of the second part hereto is trustee under the before-mentioned consolidated mortgage for the benefit of the holders of all the said consolidated bonds, numbers one to four thousand seven hundred inclusive, as well as trustee under this Indenture in respect of the special trust created, and special and additional security thereby given for the special and separate benefit of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, it is hereby declared and agreed, in conformity with a provision in that regard contained in said consolidated mortgage, that such circumstances of the said the Farmers' Loan and Trust Company being likewise trustee under the said consolidated mortgage, shall in no wise detract from, affect or impair the special and exclusive rights and securities of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, held by them through the said trusteeship of the said party of the second

part, under this Indenture, for their separate use and benefit as aforesaid. 433

AND THIS INDENTURE FURTHER WITNESSETH that the said Adrian Iselin and Adrian Iselin, Junior, in consideration of the premises, do hereby for themselves and their representatives covenant and agree to and with the said party of the second part, as trustee under this Indenture, and for the uses and purposes thereof, and to and with all such persons and corporations as shall from time to time become or be lawful owners or holders of any of the before 434 mentioned fourteen hundred bonds, numbers one to fourteen hundred inclusive, having endorsed thereon such certificate of the party of the second part by its President, as is above provided for, that they said Adrian Iselin and Adrian Iselin, Junior, and their representatives, shall and will at any time, and all times hereafter, upon reasonable request therefor, and at the expense of the party requesting the same, make, do and execute all such further and other acts, deeds, conveyances or assurances, as 435 under the advice of competent counsel shall be deemed necessary or advisable, in order to confirm, assure and make effectual the assignment and transfer hereinbefore contained or intended to be made to the party of the second part as trustee for the benefit and security of the holders of said fourteen hundred bonds, numbers one to fourteen hundred inclusive, in accordance with the true intent and meaning hereof, to effectuate the objects and purposes of this Indenture. 436

IT IS HEREBY FURTHER PROVIDED, DECLARED AND AGREED that in the case of the party of the second part, trustee hereunder, entering upon and taking possession of the said Railroad and other property in the State of Tennessee, covered by the said lien originally held by the State, and hereby assign to

the party of the second part, as trustee hereunder, in consequence of default made by said Railroad Company, entitling it so to do, it shall be lawful and competent for such trustee to employ an agent or agents for the performance of any such duties, acts and things in and about taking and maintaining such possession, and using, operating, maintaining and managing the said Railroad, and collecting the income, earnings and profits thereof, and performing the other duties of the trust created hereby, as such trustee may deem fit, and for the performance of any other acts in and about such possession and management, the performance wherof can be properly delegated to an agent; and that such trustee, provided it shall have exercised reasonable prudence and care in the selection and employment of such agent or agents for any of such purposes, shall not be responsible for losses or damages in the premises caused by the act, neglect or default of such agent or agents. But this provision is not intended, and shall not be so construed as to exempt the trustee in case of sale being made of the said premises covered by the lien in enforcement of such lien, from due responsibility to the bondholders hereby secured for the due application of the proceeds of such sale, received either by the trustee or by any agent or agents whom it may see fit to employ to receive such proceeds of sale.

And the said the Farmers' Loan and Trust Company, Trustee hereunder, and its successors are hereby released from executing the bond required from trustees by the laws of Tennessee and from giving any bond or security as trustee or trustees under this Indenture which may or might otherwise be required by the laws of either of the States of Tennessee, Mississippi and Alabama.

And said party of the second part hereby accepts 441
the trust hereby created and agrees to perform the duties thereof.

IN WITNESS WHEREOF, the said parties of the first part have hereto set their hands and seals, and the party of the second part, in pursuance of a resolution of its Board of Directors, hath hereunto affixed its corporate seal and caused the same to be attested by its President.

And the said party of the third part, in pursuance 442
of a resolution of its Board of Directors, have hereunto affixed its corporate seal and caused the same to be attested by its President and Secretary the day and year first above written.

ADRIAN ISELIN, (Seal.)

Witnesses,
W. H. CLARKSON, ADRIAN ISELIN, JR. (Seal.)
CHARLES NETTLETON, A. ISELIN & CO. (Seal.)

THE FARMERS' LOAN AND TRUST CO. 443

(Seal.) By R. G. ROLSTON, *President.*

THE MEMPHIS AND CHARLESTON RAILROAD CO.

(Seal.) By R. T. WILSON, *President.*

By S. R. CRUSE, *Secretary.*

STATE OF NEW YORK, } ss. 444
City and County of New York. }

BE IT REMEMBERED, That on the 21st day of August, A.D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Tennessee, in and for the State of New York, residing in said City of New York, personally appeared R. T. WILSON, the President of the Memphis and

dent of the Farmers' Loan and Trust Company, whose name is signed to the foregoing instrument, and who is known to me, and acknowledged before me on that day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date, as his act and deed, and the act and deed of said Farmers' Loan and Trust Company. And, being duly sworn, he did depose and say, That he is the president of the said Farmers Loan and Trust Company, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as such President. And on the said 29th day of August, A. D. 1877, before me also personally appeared Adrian Iselin and Adrian Iselin, Jr., composing the firm of A. Iselin & Co., and whose names are signed to the foregoing Instrument, and who are known to me, and severally acknowledged before me on that day that, being informed of the contents of said Instrument, they executed the same voluntarily on the day the same bears date, as their act and deed, and the act and deed of their said firm.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 29th day of August, A. D. 1877.

CHARLES NETTLETON.

Commissioner for Alabama, in New York.

(Seal.)

STATE OF NEW YORK, } ss : 457
City and County of New York. }

BE IT REMEMBERED, That on the 21st day of August, A. D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Mississippi, in and for the State of New York, residing in the said City of New York, personally appeared R. T. Wilson, President of the Memphis and Charleston Railroad Company, who acknowledged that he signed, sealed and delivered the foregoing Instrument, as his act and deed, as such President, and the act and deed 458
of the said Memphis and Charleston Railroad Company. And, being by me duly sworn, he did depose and say, That he is the President of said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company is the corporate seal of said Company, and that it was affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as the President of 459
said Company. And, on the 29th day of August, A. D. 1877, before me also personally appeared Roswell G. Rolston, the President of the Farmers' Loan and Trust Company, of New York, who acknowledged that he signed, sealed and delivered the foregoing Instrument as his act and deed as such President, and the act and deed of the said Farmers' Loan and Trust Company. And, being by me duly sworn, he did depose and say, that he is the President of the said Farmers' Loan and Trust Com- 460
pany, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as such President. And on the said 29th day of August, A. D. 1877,

461 before me also personally appeared Adrian Iselin and Adrian Iselin, Jr., composing the firm of A. Iselin & Co., who each acknowledged that they signed, sealed and delivered the foregoing Instrument as their act and deed, and the act and deed of their said firm.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 29th day of August,
462 A. D. 1877.

CHARLES NETTLETON,
Commissioner for Mississippi, in New York.
(Seal.)

STATE OF NEW YORK, }
City and County of New York. } ss :

BE IT REMEMBERED, That on this 10th day of
463 September, A. D. 1877, before me, Charles Nettleton, a Commissioner of Deeds of the State of Tennessee, in and for the State of New York, personally appeared S. R. Cruse, Secretary of the Memphis and Charleston Railroad Company, the within named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the foregoing Instrument for the purposes therein contained, as his act and deed, and the act and deed of said Company.
464 And the said S. R. Cruse, being duly sworn, he did depose and say, that he was the Secretary of said Memphis and Charleston Railroad Company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said Company, was such corporate seal, and that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name

thereto by the like order, as the Secretary of said 465
Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Tennessee in New York.

Seal.)

466

STATE OE NEW YORK,)
City and County of New York.) ss. :

BE IT REMEMBERED, That on this 10th day of September, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Alabama, in and for the State of New York, residing in said City of New York, personally appeared S. R. CRUSE, Secretary of the Memphis and 467
Charleston Railroad Company, whose name is signed to the foregoing Instrument, and who is known to me, and who acknowledged to me on this day that, being informed of the contents of said Instrument, he executed the same voluntarily on the day the same bears date, as his voluntary act and deed, and the voluntary act and deed of said Company. And, being by me duly sworn, he did depose and say, that he was the Secretary of said Company, and that the seal affixed to the foregoing Instru- 468
ment, purporting to be the corporate seal of said Company, was such corporate seal, and that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto by the like order, as the Secretary of said Company.

469 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Alabama in New York.

(Seal.)

470 STATE OF NEW YORK, }
City and County of New York. } ss.:

BE IT REMEMBERED, That on this 10th day of September, A. D. 1877, before me, CHARLES NETTLETON, a Commissioner of Deeds of the State of Mississippi, in and for the State of New York, residing in said City of New York, personally appeared S. R. CRUSE, Secretary of the Memphis and Charleston Railroad Company, who acknowledged that he signed, sealed and delivered the foregoing
471 Instrument as his act and deed as such Secretary, and the act and deed of said Company. And, being duly sworn, he did depose and say, that he was the Secretary of said Company, and that the seal affixed to the foregoing Instrument, purporting to be the corporate seal of said Company, is such corporate seal, and that it was so affixed thereto by order of the Board of Directors of said Company, and that he signed his name thereto as such Secretary, by the like order.

472 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official seal, this 10th day of September, A. D. 1877.

CHARLES NETTLETON,
Commissioner for Mississippi in New York.

RESPONDENT'S EXHIBIT NO. 3. 473
W. H. D. L., Sp'l. Exr.

I, Marshall T. Polk, Treasurer of the State of Tennessee, do hereby certify that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, have this day, in pursuance of the sixth and seventh sections of the Act of the Legislature of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed Feb- 474
ruary 25th, 1869, filed in my office certified copies of certain resolutions of the Board of Directors of the Memphis and Charleston Railroad Company, and a certain written consent and agreement of said Memphis and Charleston Railroad Company under its corporate seal, duplicate copies of which resolutions and consent and agreement are hereunto annexed.

Given under my hand and official seal this twenty- 475
fifth day of July, eighteen hundred and seventy-seven.

MARSHALL T. POLK,
Treasurer.

476

477 At a meeting of the Board of Directors of the Memphis & Charleston Railroad Company, held in the city of Memphis, on the thirty-first day of May, eighteen hundred and seventy-seven.

Present—R. T. Wilson, President; C. M. McGhee, Vice-President; Messrs. J. R. Mosby, Jerome Hill, W. S. Hastie, Napoleon Hill, W. W. Garth, J. D. Rather and George P. Bierne. Upon motion of Mr. Napoleon Hill, duly seconded, it was resolved, all
478 the members of the Board present voting in favor thereof, except George P. Bierne, as stated in the three resolutions next following, viz:

Resolved, That this Board hereby gives its consent and approbation, and that of the Company, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, may, so far as the State of Tennessee is concerned, pay this Company's indebtedness to the State of Tennessee for or in respect of the Ten-
479 nessee State bonds heretofore loaned or delivered to or in aid of this Company, and for which the State has a lien in Tennessee State bonds or coupons thereof, as provided for by the Act of the Legislature of Tennessee in that behalf, approved February 25th, 1869, and the Acts amendatory thereof, or supplementary thereto, and that by such payment said A. Iselin & Company shall acquire and be entitled to the rights, liens and securities in that behalf, provided for by the sixth and seventh sec-
480 tions respectively of the said Act of February 25th, 1869.

Resolved, That the President and Secretary of this Company be and are hereby authorized and directed to execute, under this Company's corporate seal, and with their signatures as such President and Secretary, an instrument substantially of the

form and effect following, in duplicate, and deliver 581
the same to said A. Iselin & Co., one copy thereof being intended to be filed with the State Treasurer of Tennessee, as follows, that is to say:

KNOW ALL MEN BY THESE PRESENTS, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said Railroad Company under the general internal 582
improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said Railroad Company the said State holds a lien upon said Company's railroad in the State of Tennessee, and other property of said Company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued, or delivered to or in aid of said Railroad Company, and for the amount of certain Tennessee State bonds issued to fund or provide for 583
certain interest upon those bonds, which during a certain period the said Railroad Company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the Railroad Company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the same more or less, upon which principal there is due from the Railroad Company 584
to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

NOW, THIS INSTRUMENT, which is executed by the

said The Memphis and Charleston Railroad Company, under its corporate seal, in pursuance of a resolution of the Board of Directors of said Railroad Company specially authorizing the same, duly passed at a meeting of said Board duly held on the thirty-first day of May instant,

WITNESSETH that the said the Memphis and Charleston Railroad Company, and the Board of Directors of said Company, respectively have given and do give its and their consent and approbation, under and in pursuance of the Act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the City of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee for or in respect of the amount of bonds of said State which were heretofore loaned or advanced or delivered to or in aid of said Railroad Company, which indebtedness is that hereinbefore referred to; and that such payment of such indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee, or coupons of such bonds, at par, as allowed by the laws of said State in that behalf; and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, to be substituted and entitled to all the liens against said Railroad Company, and against its property, for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian

Iselin, Junior, upon so paying such indebtedness, 489
may receive from the Governor and Secretary of the State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above mentioned Legislative Act of the twenty-fifth day of February, eighteen hundred and sixty-nine. And under and in pursuance of the seventh section of the Act last above mentioned, the said The Memphis and Charleston Railroad Company, and the Board of Directors of said Company, do hereby further respectively assent and agree that said Adrian Iselin 490
and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as said State is concerned, in the bonds or coupons of said State as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said Company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the railroad of said Memphis and Charles- 491
ton Railroad Company, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being (and being or hereby declared) in accordance with the seventh section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said Railroad Company, in the same position and with the same rights which the State of 492
Tennessee had previous to and before the said payment, and with full power to enforce the same.

In Witness whereof the said Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors as aforesaid, hath hereunto affixed its corporate seal, and caused these

493 presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven. And this Board hereby agrees and gives its consent and approbation to everything stated or contained in the instrument above directed to be executed and delivered to said A. Iselin & Co.

Resolved, That the Secretary be directed to furnish to A. Iselin & Co., in duplicate, copies certi-
494 fied by him of these three resolutions.

I HERE CERTIFY that the foregoing is a true copy from the minutes of a meeting of the Board of Directors of the Memphis and Charleston Railroad Company, held in the city of Memphis, Tennessee, on the thirty-first day of May, eighteen hundred and seventy-seven.

S. R. CRUSE,
Secretary and Traesurer of the Memphis
(Seal.) *and Charleston Railroad Co.*
495

KNOW ALL MEN BY THESE PRESENTS, that whereas the Memphis and Charleston Railroad Company is indebted to the State of Tennessee, for or in respect of the amount of the bonds of the said State which were loaned or advanced or delivered to or in aid of said railroad company under the general internal improvement laws of said State, or other laws of said State, in that behalf, and for which indebtedness of said railroad company the said State holds
496 a lien upon said company's railroad in the State of Tennessee, and other property of said company, as provided by law, which indebtedness is for the amount of bonds of said State of Tennessee, originally loaned, issued, or delivered to or in aid of said railroad company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during

a certain period the said railroad company failed to provide for; the aggregate amount of principal of such bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the railroad company to the sinking fund, being sixteen hundred and seventy-one thousand seven hundred dollars, be the sume more or less, upon which principal there is due from the railroad company to the State about fifteen thousand dollars for interest due on the first day of January last; and interest has accrued and is accruing upon the whole amount of said principal from the first day of January last, and such interest for six months will fall due on the first day of July next.

NOW, THIS INSTRUMENT, which is executed by the said The Memphis and Charleston Railroad Company under its corporate seal, in pursuance of a resolution of the Board of Directors of said railroad company, specially authorizing the same, duly passed at a meeting of the said board, duly held on the 31st day of May, instant.

WITNESSETH, That the said The Memphis and Charleston Railroad Company, and the Board of Directors of said company respectively, have given, and do give its and their consent and approbation, under and in pursuance of the said Act of the Legislature of the State of Tennessee, entitled "An Act to liquidate the State debt contracted in aid of railroad companies in the State of Tennessee," passed February 25th, 1869, and the Acts of such Legislature in amendment thereof, or supplementary thereto, that Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Company, of the City of New York, may, so far as the State of Tennessee is concerned, pay the indebtedness of the Memphis and Charleston Railroad Company to

the State of Tennessee for or in respect of the amount of bonds of said State, which were heretofore loaned or advanced or delivered to or in aid of said railroad company, which indebtedness is that hereinbefore referred to, and that such payment of said indebtedness may be so made by said Adrian Iselin and Adrian Iselin, Junior, in the bonds of the State of Tennessee or coupons of such bonds at pao, as allowed by the laws of said State in that behalf, and that said Adrian Iselin and Adrian Iselin, Junior, may and shall, upon so paying such indebtedness, be substituted and entitled to all the liens against said railroad company and against its property for the payment of such indebtedness that the State of Tennessee had or has by law; and that said Adrian Iselin and Adrian Iselin, Junior, upon so paying such indebtedness may receive from the Governor and Secretary of State of Tennessee such certificate in that behalf as is provided for by the sixth section of the above-mentioned legislative act of February 25th, 1869.

And under and in pursuance of the seventh section of the act last above mentioned the said The Memphis and Charleston Railroad Company, and the Board of Directors of said Company, do hereby further respectively assent and agree that said Adrian Iselin and Adrian Iselin, Junior, upon so paying the aforesaid indebtedness of the Memphis and Charleston Railroad Company to the State of Tennessee, so far as the said State is concerned, in the bonds or coupons of said State, as aforesaid, may and shall, upon filing with the Treasurer of the State of Tennessee this instrument, executed under the corporate seal of said Company, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon the Railroad of said Memphis and Charleston Railroad Company or its

property, and shall have the same right to enforce 505
the same which the State of Tennessee had, the object and intent being (and being so hereby declared) in accordance with the seventh section of the said Act of February 25th, 1869, to place the said Adrian Iselin and Adrian Iselin, Junior, so paying such indebtedness, with the consent of said Railroad Company, in the same position and with the same rights which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same. 506

IN WITNESS WHEREOF, the said The Memphis and Charleston Railroad Company, in pursuance of a resolution of its Board of Directors, as aforesaid, have hereunto affixed its corporate seal and caused these presents to be executed on its behalf by its President and Secretary, the thirty-first day of May, eighteen hundred and seventy-seven.

THE MEMPHIS AND CHARLESTON RAILROAD CO., 507
BY R. T. WILSON,
President.

THE MEMPHIS AND CHARLESTON RAILROAD CO.,
[L. S.] BY S. R. CRUSE,
Secretary and Treasurer.

State of Tennessee,
County of Shelby. 508

Personally appeared before me Hunsdon Cary, a Notary Public in and for said county, duly commissioned and qualified, S. R. CRUSE, Secretary and Treasurer of the Memphis and Charleston Railroad Company, who is personally known to me both in his person and as such Secretary and Treasurer, who, being duly sworn, deposes and says and ac-

509 knowledges that he executed the foregoing instrument, being acquainted with its contents, for the purposes therein stated, in the interest and on the behalf of the Memphis and Charleston Railroad Company, and under authority granted him by resolution of the Board of Directors of said Company, passed at a meeting of said Board of Directors on the thirty-first day of May, eighteen hundred and seventy-seven.

510 Witness my hand and notarial seal this June ninth, A.D. eighteen hundred and seven-seven.

HUNSDON CARY,
Notary Public.

We, James D. Porter, Governor of the State of Tennessee, and Charles N. Gibbs, Secretary of State of the State of Tennessee, do hereby certify, that Adrian Iselin and Adrian Iselin, Junior, composing
511 the firm of A. Iselin & Co., of the City of New York, have this day filed with the Treasurer of the State of Tennessee the written consent of the Board of Directors of the Memphis and Charleston Railroad Company, and likewise the written assent and approbation of the said The Memphis and Charleston Railroad Company, under the corporate seal of the said Railroad Company, that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., may, under and in pursu-
512 ance of the sixth and seventh sections of the Act of the Legislature of the State of Tennessee, entitled "An Act to Liquidate the State Debt contracted in aid of Railroad Companies in the State of Tennessee," passed the twenty-fifth day of February, eighteen hundred and sixty-nine, and the Acts of such Legislature in amendment thereof or supplementary thereto, pay, so far as the State of Tennes-

see is concerned, in bonds of the State of Tennes- 513
see, or coupons of such bonds, at par, as by law of the State of Tennessee is authorized, the amount of the indebtedness hereinafter mentioned of the said Memphis and Charleston Railroad Company to the State of Tennessee; and that said Adrian Iselin and Adrian Iselin, Junior, composing the firm aforesaid, shall thereby and thereupon, as provided by the sixth section of said Act, be substituted and entitled to all the liens against said Company for the payment of said debt that the State of Tennes- 514
see had or has by law, and shall thereby and thereupon, as provided by the seventh section of said Act, be entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said railroad, or its property, and shall have the same right to enforce the same which the State of Tennessee had, the object and intent being thereby declared to be to place the said Adrian Iselin and Adrian Iselin, Junior, so paying, with the consent of said Railroad Company, in the same position, 515
and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

And We do Further Certify that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have thereupon, with the consent and approbation of the said Railroad Company, and of the Board of Directors thereof, and under and in pursuance of and in accordance with the said sixth and seventh sections of the 516
aforesaid Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other laws of the State of Tennessee, in that behalf paid to the State of Tennessee, in the bonds of said State, and coupons of such bonds, at par, as allowed by law, the amount of indebtedness of the the said The Memphis and Charleston Railroad

Company to the State of Tennessee, and for which the State of Tennessee holds a lien by law upon said Company's railroad in the State of Tennessee, and other property, which indebtedness is for or in respect of the amount of the bonds of the State of Tennessee which under the general improvement law passed the eleventh day of February, eighteen hundred and fifty-two, and the other Acts of the Legislature of said State, were originally loaned, issued, or delivered to or in aid of said Company, and for the amount of certain Tennessee State bonds issued to fund or provide for certain interest upon those bonds, which during a certain period the said Railroad Company failed to provide, the aggregate amount of the principal of such State bonds, including those so issued for funding interest, after deducting and giving credit for the amount heretofore paid on account by the Railroad Company to the sinking fund being sixteen hundred and sevetny-one thousand nine hundred and sixteen dollars and twenty-five cents; as also the further amount of sixty-four thousand nine hundred and ninety dollars for interest accrued up to the first day of July instant upon the before-mentioned amount of sixteen hundred and seventy-one thousand nine hundred and sixteen dollars and twenty-five cents, making the whole amount of such indebtedness of said Railroad Company to the State of Tennessee, and for which the State holds a lien as aforesaid, the aggregate sum of seventeen hundred and thirty-six thousand nine hundred and six dollars and twenty-five cents, exclusive of interest accrued since the first day of July instant, which aggregate sum or amount, together with the interest accrued thereon since the first day of July instant, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have this day, in the manner and under the circumstances

aforesaid, paid to the State of Tennessee, in Tennessee State bonds and coupons, at par, as allowed by the laws of said State; and we do further certify and declare that thereupon, and under and in pursuance of the sixth and seventh sections of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the other Acts of the Legislature of the State of Tennessee in that behalf, the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., have become and are the purchasers and assignees of the above-mentioned indebtedness of The Memphis and Charleston Railroad Company to the State of Tennessee, with all the liens held by the said State therefor, and with all the rights in that behalf accorded or authorized by the said sixth and seventh sections respectively of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, and the same are declared to be and are hereby assigned and transferred to them accordingly; and under and in accordance with the sixth section of the said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that the said Adrian Iselin and Adrian Iselin, Junior, are substituted and entitled to all the liens against said Railroad Company for the payment of said indebtedness that the State of Tennessee had or has by law, and under and in accordance with the seventh section of said Act of the twenty-fifth day of February, eighteen hundred and sixty-nine, it is hereby declared that said Adrian Iselin and Adrian Iselin, Junior, are entitled to have and hold all the lien or liens which the State of Tennessee had or has upon said Memphis and Charleston Railroad or its property, and shall have the same right to enforce the same which the State of Tennessee had; the object and intent being, and being hereby de-

525 clared to be, to place the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., in the same position, and with the same rights, which the State of Tennessee had previous to and before the said payment, and with full power to enforce the same.

IN WITNESS WHEREOF we have hereunto set our hands and official seals this twenty-fifth day of July eighteen hundred and seventy-seven.

(Signed) JAS. D. PORTER,

526 *Governor of Tennessee.*

(Seal of State of Tennessee.) CHAS. N. GIBBS,
Secretary of State.

527

528

Deposition of Jno. C. Brown.

UNITED STATES CIRCUIT COURT.

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS ET AL.
On behalf of the holders of Internal Improvement Bonds of Tennessee issued to the Memphis & Charleston Railroad Company,
vs.
THE MEMPHIS & CHARLESTON RAILROAD COMPANY ET AL.

Deposition of John C. Brown, witness for defendants, taken in Nashville, Tennessee, April 25th, 1881, before L. W. Holms, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee.

Taken pursuant to agreement.

Present—W. Y. C. Holms, for Defendants.

Jno. C. Brown, being first duly sworn, deposed as follows:

In answer to oral interrogatories he states:

My name is Jno. C. Brown. I have lived in the State of Tennessee all my life, and am now fifty-one years of age. I am a lawyer by profession and practice, and my residence is Pulaski, Giles county, Tennessee. From early manhood to the commencement of the war, and then from the close of it up to 1871, I devoted myself almost exclusively to the practice of

my profession. I was elected President of the convention that revised the constitution in 1870, and presided over its deliberations. I was the first Governor elected under the new State constitution of 1870, and was inaugurated in 1871, and re-elected and inaugurated in 1873 for a second term. During the years 1869 and 1870 I was thoroughly acquainted with the sentiment of the people of the State. The acts for the sale of the insolvent and defaulting railroads originated in and were produced by a prevalent sentiment throughout the State, that such measures would subserve the best interests of the State in retiring a part of its bonded debt, and to the same extent benefit the holders of her bonds. The acts of February 25th, 1869, and January 20th, 1870, enabling the solvent roads to retire their debts to the State, originated in and were produced by the same sentiment, and by a sentiment that it would benefit the roads in their depressed condition by enabling them to use the State's first lien on their property to purchase up and pay the State debt in her bonds.

I was intimately acquainted with Dempsey Weaver during the years 1869 and 1870, and my administration as Governor. He was the President of the Third National Bank, and was then and had been for years a leading financial man residing at Nashville. I had frequent conversations with him during the years 1869 and 1870. He was the agent and correspondent of a very large number of the bondholders of Tennessee; he favored and approved for them the acts above referred to, as they would reduce the State debt and thereby increase her capacity to pay them. The railroads also favored it as measures of relief to them in their broken down condition.

The constitutional convention of 1870 passed no measure discriminating between any State bonds, nor has the Legislature, except as to a few issued to

the Mineral House R. R. Co. During my two terms as Governor, I received an immense number of letters from holders of State bonds from New York, Philadelphia, Baltimore and other places, stating that now the State had reduced her debt, and asking when she was going to resume payment of her interest. The bonded debt of the State had been reduced by the sale of the insolvent roads, and by some of the solvent roads having retired their debts under the acts of 1869 and 1870. I did not preserve this correspondence, but I know the bondholders were clamorous during the whole of my administration for the payment of their interest, and stated the retiring the bonded debt under the acts of 1869 and 1870 as one of the reasons why the State should be the more able to pay their interest. Not one of them ever intimated a right to go upon the railroads, or that this legislation was a violation of their rights. In my second gubernatorial canvass I advocated the funding of the unpaid coupons, and my opponents agreed with me as to this measure. I know Mr. Weaver, as agent of the bondholders, warmly and cordially approved this measure, and many others did also. Immediately after my inauguration in 1873 I sent into the Legislature a message advocating the funding act of 1873, and in that message was given an accurate statement in figures of the amount of State bonds that had been retired by the sale of delinquent roads and settlements with solvent roads under the acts of 1869 and 1870, accompanied also with the Comptroller's report, showing the same facts in detail. Mr. Weaver and other correspondents of foreign bondholders called at the capitol and got a vast number of these printed messages and forwarded them to the foreign bondholders. I felt it my duty to ascertain thoroughly and accurately whether the bondholders approved or disapproved this funding measure. They approved it

almost universally if not entirely so; I never heard of a dissent. After the passage of the measure nearly all of the holders funded their over-due coupons, and registered their old bonds under this act. The sale of the delinquent roads and the purchase of State bonds by the solvent roads to settle their debts was published all over the country, as well as the sale of the substitution bonds of the companies. Never from 1869 to the close of my administration in 1875, did I hear of State bondholders claiming that the State bonds issued to railroads or their coupons were due to them from the companies to which issued or claiming the lien. No such lien was ever set up during my official connection with the State, not even after the panic and financial depression had made it evident that it would be with the utmost difficulty the State could pay her interest, if at all.

I believed at the time of the passage of the acts of 1869 and 1870, and still believe, that the making of the settlements therein provided tended in a great degree to place the State in a position to resume payment of interest upon its entire debt; and the act of 1873, under which the debt was funded and registered, was made likewise, under the confident expectation that the interest would be punctually paid. And this undoubtedly would have been the result but for the subsequent panic and paralysis of the industries of the country. In order to force the several railroads that had not settled under the acts of 1869 and 1870 to do so, I sent either a message or the form of a resolution to the Legislature, requiring the roads to settle in a given time, or, in default, withdrawing the privilege.

And further saith not.

JNO. C. BROWN.

Subscribed and sworn to before me this, April 23, 1880.

L. W. HUMES,
Special Examiner.

I, L. W. Humes, Special Examiner, duly appointed under an order of the United States Circuit Court, Western District of Tennessee, to take the testimony on behalf of the defendants in the above entitled suit, in the State of Tennessee, do hereby certify that the foregoing deposition was taken before me as stated in the caption, and reduced to writing, and subscribed to by the witness in my presence.

Witness my hand, this April 23, 1880.

L. W. HUMES,
Special Examiner.

Memphis & Charleston R. R. Receipts to the State of Tennessee for Bonds.

UNITED STATES CIRCUIT COURT,

SIXTH JUDICIAL DISTRICT — WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS *et al.*, on behalf of the holders of Internal Improvement Bonds of Tennessee, issued to the Memphis & Charleston Railroad Company.

versus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.*

It is hereby stipulated and agreed between the parties to the above entitled suit, that the certified copies of the receipts given by the railroads of Tennessee to the State for bonds issued to them respectively, and which have been produced by the complainants herein, shall be marked by the Special Examiner as Complainant's Exhibits, and filed by him separately. And that the same may be read in evidence by the complainants, subject to all legal objections, without attaching the same to the deposition of any one witness.

New York, November 12, 1879.

E. L. ANDREWS,
Sol'r, and of Counsel for Complainants.

W. Y. C. HUMES,
Sol'r, and of Counsel for Respondents.

Complainant's Exhibit A.

W. H. D. L., Sp'l Ex'r.

MEMPHIS AND CHARLESTON RAILROAD COMPANY.

Received of William B. Campbell, Governor of the State of Tennessee, two hundred and forty coupon bonds of said State for one thousand dollars each, dated 1st January, 1852, and due on the 1st January, 1892, Letter B, from number 326 to number 565 inclusive, issued under the provisions of an Act passed by the General Assembly of said State on the 11th Feb'y, 1852, entitled "an Act to establish a system of Internal Improvements in this State," the above bonds are payable, both bond and coupon, at the City at New York, the first coupon falling due 1st January, 1853.

October 4th, 1852.

$240,000.

ARC'D E. MILLS,

President M. & C. & R. R. Co.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Arc'd E. Mills, President M. & C. R. R. Co., for 240 Bonds of the State of Tennessee, Letter B, from No. 326 to 565 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.]

CHAS. N. GIBBS,

Secretary of Stat .

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Charles N. Gibbs, whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, Secretary of State, for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court, of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, of said Court, at office, this 18th day of August, 1879.

[L.S.] J. R. McCANN,
Clerk.

13 **Complainant's Exhibit B.**

W. H. D. L., Sp'l Ex'r.

$160,000.

Rec'd of William B. Campbell, Governor of the State of Tennessee, one hundred and sixty coupon bonds of said State, for one thousand dollars each, dated the 1st day of January, 1852, and due on the 1st Jan'y, 1892, letter "B," from number 566 to number 725, inclusive, issued under the provisions
14 of an Act passed on the 11th Feb'y, 1852, entitled, "An Act to establish a system of Internal Improvements in this State," and which bonds are payable, both bond and coupons, at the city of New York, the first coupon falling due the 1st July, 1853.

Jan'y 3d, 1853.

A. E. MILLS,
Prest. M. & C. R. R.

I, C. N. GIBBS, Secretary of State of the State of
15 Tennessee, do certify that the foregoing is a copy of receipt of A. E. Mills, Pres't M. & C. R. R., for 160 bonds of the State of Tennessee, from No. 566 to 725, inclusive, the original of which is now of record in my office.

In testimony whereof I have hereunto subscribed my official signature, and by order of the Governor affixed the great seal of the State of
16 Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

Seal of Tennessee.

CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, :
Davidson County. :

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said county, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, :
Davidson County. :

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August, 1879.

: Davidson :
: Co. Court. :

J. R. MCCANN,
Clerk.

21 **Complainant's Exhibit "C."**

W. H. D. L., Spl. Exr.

$200,000.

Received of Andrew Johnson, Governor of the State of Tennessee, two hundred coupon bonds of said State, for one thousand dollars each, drawing six per cent. per annum, numbered from No. 1506 to No. 1705, including both these numbers, dated 1st January, 1855, and first coupon falling due 1st
22 July, 1855, and principal payable first of January, 1892, which bonds are issued for the second section of the Memphis & Charleston R. R. Co., being twenty miles, under the provisions of the act of the 11th February, 1852, and the act amendatory thereof passed February 8th, 1854. Principal and interest payable at the City of New York.

November 28th, 1854.

SAM TATE.
Prest. M. & C. R. R. Co.

23

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Sam Tate, Prest. M. & C. R. R. Co., for two hundred bonds of the State of Tennessee, from No. 1506 to 1705 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor,
24 affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.] CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE, :
Davidson County. :

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Charles N. Gibbs, whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, Secretary of State, for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, :
Davidson County. :

I, J. R. MCCANN, Clerk of the County Court, of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, of said Court, at office, this 18th day of August, 1879.

[L.S.] J. R. MCCANN,
Clerk.

29 **Complainant's Exhibit "D."**

W. H. D. L., Spl. Exr.

$40,000.

Received of Andrew Johnson, Governor of the State of Tennessee, forty coupon bonds of said State, for $1,000 each, numbered from 2015 to 2054, including both these numbers, dated 1st January, 1855, and falling due 1st January, 1892, issued for the construction of a bridge over Big Hatchie River,
30 under the provisions of the second section of an act passed February 8th, 1854, and other acts there referred to, the first coupon falling due 1st January, 1856.

Nashville, May 22d, 1855.

SAM TATE,

Prest. and Agent Memphis and Charleston Railroad Co.

I, C. N. GIBBS, Secretary of State of the State of
31 Tennessee, do certify that the foregoing is a copy of a receipt of Sam Tate, Prest. and Agent Memphis & Charleston R. R. Co., for forty bonds of the State of Tennessee, from No. 2015 to 2054 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department
32 in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.] CHAS. N. GIBBS,

Secretary of Stat

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, *sole presiding Judge of the County Court of said county*, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. McCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August, 1879.

[L.S.]

J. R. McCANN,
Clerk.

37 **Complainant's Exhibit "E."**

W. H. D. L., Spl. Exr.

$1000,00.

Received of Andrew Johnson, Governor of the State of Tennessee, one hundred coupon bonds of said State, for $1,000 each, numbered from 2,055 to No. 2,154, including both these numbers, falling due on the 1st January, 1892, first coupon falling due 1st January, 1856, and dated the 1st of
38 January, 1855, issued to the Memphis & Charleston Railroad Company, under the provisions of the Act of 11th February, 1852, and particularly the first proviso of the 15th section of said Act, and the Act of 8th of February, 1854, amendatory thereof, being for the $2,000 additional per mile, given by the last recited act on the first section of fifty miles on said road.

May 22d, 1855.

SAM TATE,

39 *Prest. and Agent Memphis & Charleston Railroad Company.*

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Sam. Tate, Prest. and Agent Memphis & Charleston R. R. Co., for 100 bonds of the State of Tennessee, from No. 2,055 to 2,154, inclusive, the original of which is now on record in my office.

In testimony whereof, I have hereunto
40 subscribed my official signature, and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.] CHAS. N. GIBBS,

Secretary of Stat .

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Charles N. Gibbs, whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, Secretary of State, for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court, of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, of said Court, at office, this 18th day of August, 1879.

[L.S.] J. R. MCCANN,
Clerk.

45 **Complainant's Exhibit "F."**

W. H. D. L., Spl. Exr.

$20,000.

Received of Andrew Johnson, Governor of the State of Tennessee, twenty coupon bonds of said State, for $1,000 each, dated 1st January, 1855, being from No. 3093 to No. 3112, including both these numbers, issued as the third installment to the Memphis & Charleston Railroad Co., for the con-
46 struction of the Hatchie bridge, under the provisions of the second section of an act passed on the 8th February, 1854, and the other acts there referred to, the first coupon falling due 1st July, 1856.

Nov. 28th, 1855.

SAM TATE.

Prest. and Agent Charleston & Memphis Railroad Co.

47 I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Sam Tate, Prest. and Agent of the Memphis & Charleston R. R. Co., for twenty bonds of the State of Tennessee, from No. 3093 to 3112 inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature,
48 and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.]

CHAS. N. GIBBS,

Secretary of State.

STATE OF TENNESSEE, :
Davidson County. :

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said county, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1870.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, :
Davidson County. :

I, J. R. McCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August,
[L.S.] 1870.

J. R. McCANN,
Clerk.

53 **Complainant's Exhibit "G."**

Received of Andrew Johnson, Governor of Tennessee, one hundred and thirty-five coupon bonds of the State of Tennessee, for one thousand each, bearing date first January, 1856, falling due 1st January, 1892, first coupon falling due 1st July, 1856, issued under an act passed January 30, 1856, entitled "An act explanatory of the proviso to the sixteenth section of the internal improvement law of this State," passed 11th February, 1852,
54 and an act entitled "An act to Amend the Charter of the Memphis & Charleston Railroad Company, and for other purposes," passed February 1st, 1856, said bonds running from No. 3403 to 3537.

March 21, 1856.

SAM TATE,

Prest. Memphis & Charleston Railroad Co.

$135,000.

55 I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Sam Tate, Prest. Memphis & Charleston Railroad Company, for one hundred and thirty-five bonds of Tennessee, from No. 3403 to 3537, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor,
56 affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.] CHAS. N. GIBBS,

Secretary of State.

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Charles N. Gibbs, whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, Secretary of State, for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1870.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court, of said County, do hereby certify, that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, of said Court, at office, this 18th day of August, 1870.

[L.S.] J. R. MCCANN,
Clerk.

61 **Complainant's Exhibit "H."**

W. H. D. L., Spl. Exr.

Recived of Andrew Johnson, Governor of the State of Tennessee, fifty coupon bonds of the State of Tennessee, of one thousand dollars each, numbered 4222 to 4271, including both these numbers, and also received of said Andrew Johnson, Governor, fifty bonds of said State, of $1,000 each, numbers 4392 to 4441, including both these numbers,
62 and making in all one hundred bonds of one thousand dollars each, the first coupon on same falling due the 1st of January, 1857, the bonds maturing the 1st of January, 1892, principal and interest all payable in the City of New York. Said bonds are issued to the Memphis & Charleston Railroad Company, under the general internal act of 1851 and 1852, and 1853 and 1854, for that section of said road extending from the seventieth to the eightieth mile eastward from Memphis.

63 SAM TATE.

Prest. and Agent Memphis and Charleston Railroad Company.

Fifty of the above bonds have been delivered to Sam Tate, and the balance are to be deposited at the Planters' Bank as soon as they can be signed by the Comptroller.

F. N. W. BURTON

Sec. of State.

64 July 9, 1856.

The above fifty bonds have been this day, July 23d, 1856, delivered to me as President of the Planters' Bank, the coupon for July, 1856, being first cut off.

O. EWING.

Prest.

I, C. X. Gibbs, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Sam Tate, President and Agent Memphis & Charleston Railroad Company, for fifty Tennessee State bonds, from No. 4326 to 4375, and fifty bonds from No. 4377 to 4377, inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1870.

[L. S.] CHAS. X. GIBBS,
Secretary of State.

STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole Presiding Judge of the County Court of said County, do hereby certify, that Charles X. Gibbs, whose genuine signature appears to the foregoing Certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1870.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. McCANN, Clerk of the County Court, of said County, do hereby certify, that John C. Fer-

69 riss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said County, duly elected and commissioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, of said Court, at office, this 18th day of August, 1879.

70 [L.S.] J. R. McCANN,
Clerk.

Complainants' Exhibit, I.

W. H. D. L., Sp'l Ex'r.

71 NASHVILLE, Tenn., Sept. 29th, 1856.

Received of Andrew Johnson, Governor of the State of Tennessee, one hundred and five coupon bonds of the State of Tennessee, for one thousand dollars each, numbered 4,492 to 4,596 including both these numbers; said bonds are dated 1st day of Jan'y, 1856, and falling due 1st day of Jan'y, 1892, first coupon falling due 1st day of Jan'y, 1857, principal and interest payable in the city of New York. Said bonds were issued to the Memphis &
72 Charleston Railroad Company under the internal improvement law of said State, passed the 11th Feb'y, 1852, and 8th Feb'y, 1854, and the several amendments thereto subsequently passed; sixty-seven thousand dollars thereof on the section of the main trunk line of said roads, extending from the eightieth-mile post east of Memphis to where said road crosses the line between the States of Tennessee

and Mississippi; and the remaining thirty-eight thousand dollars are issued upon the bridges built by said company across Big Hatchie River and Tuscumbia and Cypress forks of same in West Tennessee, in pursuance of an act of the Legislature of Tennessee passed the 29th day of January, 1866, Chapter 225, Section 8.

SAM. TATE, *Pres't and ag't.*,
Memphis & Charleston Railroad Co.

I, C. N. Gibbs, Secretary of the State of Tennessee, do certify that the foregoing is a copy of the receipt of Sam. Tate, President and Agent Memphis and Charleston Railroad Company, for one hundred and five Tennessee State bonds, numbers from 4,492 to 4,596, the original of which is now of record in my office.

In testimony wherof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department in the City of Nashville, this 18th day of August, A. D. 1870.

[L. S.] CHAS. N. GIBBS,
Secretary of State.

77 STATE OF TENNESSEE, }
Davidson County. }

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said county, do hereby certify that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

78 Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
County Judge.

STATE OF TENNESSEE, }
Davidson County. }

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss,
79 Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected and commisioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August,
[L.S.] 1879.

80 J. R. McCANN,
Clerk.

Complainant's Exhibit "J."

W. H. D. L., Spl. Exr.

MEMPHIS & CHARLESTON RAILROAD,
NASHVILLE, Tennessee, Oct. 20th, 1869.

Received of W. G. Brownlow, Governor of the State of Tennessee, three hundred of the six per cent. coupon bonds of said State, for one thousand dollars each, principal and interest payable in New York. The bonds fall due on the first of January, 1900; the first coupons fall due July 1st, 1869. Said bonds are numbered from 3968 to 3967, both numbers inclusive.

Said bonds are issued to the Memphis & Charleston Railroad Company, under the act of December 7, 1867, appropriating three hundred thousand dollars to said railroad company, the January coupons falling due 1st January, 1869, are removed at the instance of the company and destroyed by the Secretary of State.

JNO. OVERTON,
Attorney in Fact for

W. J. WICKS,
Prest. Memphis & Charleston Railroad.

I, C. N. GIBBS, Secretary of State of the State of Tennessee, do certify that the foregoing is a copy of a receipt of Jno. Overton, attorney in fact for W. J. Wicks, Prest. Memphis and Charleston Railroad, for three hundred Tennessee State bonds, from No. 3668 to 3967, both inclusive, the original of which is now of record in my office.

In testimony whereof, I have hereunto subscribed my official signature, and by order of the Governor, affixed the great seal of the State of Tennessee, at the Department

85 in the City of Nashville, this 18th day of August, A. D. 1879.

[L. S.] CHAS. N. GIBBS,
Secretary of State.

STATE OF TENNESSEE,
Davidson County.

I, JOHN C. FERRISS, sole presiding Judge of the County Court of said county, do hereby certify
86 that Chas. N. Gibbs, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, Secretary of State for the State of Tennessee, duly elected and qualified as such; and that said attestation is in due form of law and by the proper officer.

Given under my hand, at office, in Nashville, on this 18th day of August, 1879.

JNO. C. FERRISS,
87 *County Judge.*

STATE OF TENNESSEE,
Davidson County.

I, J. R. MCCANN, Clerk of the County Court of said county, do hereby certify that John C. Ferriss, Esq., whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, sole Presiding Judge of the County Court in and for said county, duly elected
88 and commisioned and qualified as such; and that said attestation is in due form of law.

Witness my hand and seal of said Court, at office, this 18th day of August,
[L.S.] 1879.

J. R. McCANN,
Clerk.

CIRCUIT COURT OF THE UNITED STATES.

SIXTH JUDICIAL CIRCUIT.

WESTERN DISTRICT OF TENNESSEE.

In Equity.

CALVIN AMORY STEVENS, EUGENE KELLY, JOHN T. TERRY and PETER GEDDES, on behalf of the Holders of Internal Improvement Bonds of the State of Tennessee, issued to the MEMPHIS & CHARLESTON RAILROAD COMPANY.

petrus

THE MEMPHIS & CHARLESTON RAILROAD COMPANY, and THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY.

I, BELL W. ETHERIDGE, clerk of the above named Court, hereby certify that the foregoing is a true copy of the records in the above-entitled cause, and which are necessary to a hearing in the Supreme Court of the United States, and that the same are prepared according to the request of the solicitors for appellants in this cause.

5 In testimony whereof I hereunto subscribe my name and affix the seal of the said Court the 11th day of May, 1881,

[L.S.] BELL W. ETHERIDGE,
Clerk.

W. B. WEISIGER,
D. Clerk.

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